# 1997

# SENATE JUDICIARY COMMITTEE

# MINUTES

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# SENATE JUDICIARY COMMITTEE
# APRIL 3, 1997

The Senate Judiciary Committee met on Thursday, April 3, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dalton to explain **Senate Bill 248** - AN ACT TO CREATE THE BROUGHTON HOSPITAL JOINT SECURITY FORCE.

Senator Miller moved to adopt a Proposed Committee Substitute for Senate Bill 248 for discussion. The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Miller, acting Chair, recognized Senator Cooper to explain **Senate Bill 452** - AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

David Owens, with the Institute of Government, was recognized to speak on the bill and to answer questions from the Committee.

After discussion of the bill, Senator Cooper explained that there were some changes which needed to be made to the bill and that it would be brought back at a future meeting.

Senator Cooper recognized Senator Miller, Chairman of the Judiciary Subcommittee on Criminal Laws, to report on the bills which had been referred to the Subcommittee.

**Senate Bill 7** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF CERTAIN CONTROLLED SUBSTANCES.

Senator Ballantine moved to give Senate Bill 7 a favorable report and re-refer the bill to Appropriations. The motion carried by voice vote.

**Senate Bill 9 (House Bill 141)** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S

RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

Senator Miller moved to adopt a Proposed Committee Substitute for Senate Bill 9 . The motion carried by voice vote.

Senator Gulley moved to amend the Proposed Committee Substitute bill by returning the punishment levels as written in the original bill. The motion carried by voice vote.

Senator Miller moved to give the Proposed Committee Substitute for Senate Bill 9 a favorable report as amended, roll it into a new Committee Substitute and re-refer it to Appropriations. The motion carried by voice vote.

Senator Miller moved to give House Bill 141 a favorable report and re-refer it to Appropriations. The motion carried by voice vote.

**Senate Bill 10 (House Bill 142)** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO RECLASSIFY THE OFFENSE OF ACCESSORY AFTER THE FACT.

Senator Reeves moved to give Senate Bill 10 a favorable report and to re-refer it to Appropriations. The motion carried by voice vote.

Senator Reeves moved to give House Bill 142 a favorable report and re-refer it to Appropriations. The motion carried by voice vote.

**Senate Bill 11 (House 144)** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION THAT THE OFFENSE OF VOLUNTARY MANSLAUGHTER BE INCREASED FROM A CLASS E FELONY TO A CLASS D FELONY.

Senator Gulley moved to give Senate Bill 11 a favorable report and re-refer it to Appropriations. The motion carried by voice vote.

**Senate Bill 14** - AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE A PERSON IS INCARCERATED.

Senator Miller moved to adopt a Proposed Committee Substitute for Senate Bill 14 for discussion. The motion carried by voice vote.

Senator Miller moved to give the Proposed Committee Substitute a favorable report and re-refer it to Appropriations. The motion carried by voice.

**House Bill 158** - AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE IN PRISON.

Senator Miller moved to give the bill a favorable report. The motion carried by voice vote.

**House Bill 159** - AN ACT TO RECLASSIFY CERTAIN OFFENSES RELATED TO ESCAPE FROM CORRECTIONAL FACILITIES.

Senator Miller moved to give the bill a favorable report. The motion carried by voice vote.

**Senate Bill 29** - AN ACT TO INCREASE THE PENALTY FOR THE ESTABLISHMENT OF PYRAMID DISTRIBUTION PLANS.

Senator Gulley moved to give Senate Bill 29 a favorable report and re-refer it to Appropriations.

**Senate Bill 75 (House Bill 66)** - AN ACT TO ESTABLISH THE OFFENSES OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW.

Senator Albertson moved to adopt a Proposed Committee Substitute for Senate Bill 75 and House Bill 66 for discussion. The motion carried by voice vote.

Senator Albertson moved to give the Proposed Committee Substitutes a favorable report and re-refer both to Appropriations. The motion carried by voice vote.

**Senate Bill 102 (House Bill 267)** - AN ACT TO INCREASE THE PENALTY FROM A MISDEMEANOR TO A CLASS I FELONY FOR THE OFFENSES OF FALSELY REPORTING THAT A BOMB OR OTHER DESTRUCTIVE DEVICE MAY EXPLODE AND PERPETUATING A HOAX BY USING A FALSE DESTRUCTIVE DEVICE.

Senator Ballantine moved to adopt a Proposed Committee Substitute for Senate Bill 102 and House Bill 267 for discussion. The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitutes a favorable report and re-refer both to Appropriations. The motion carried by voice vote.

**Senate Bill 202** - AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR GANG-RELATED CRIMINAL OFFENSES.

Senator Ballantine moved to adopt a Proposed Committee Substitute for Senate Bill 202 for discussion. The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report and re-refer it to Appropriations. The motion carried by voice vote.

There being no further business, the meeting adjourned at 11:00 a.m.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

# SENATE JUDICIARY COMMITTEE
# APRIL 2, 1997

## AGENDA

| | | |
|---|---|---|
| SB 7 | Increase Drug Penalties | Cooper |
| SB 9 | Embezzlement/Increase Penalties | Miller |
| SB 10 | Accessory After the Fact/Penalty | Reeves |
| SB 11 | Vol. Manslaughter/Class D Felony | Gulley |
| SB 14 | Reclassify Prison Offenses | Jenkins |
| SB 29 | Increase Penalty/Pyramid Schemes | Jordan |
| SB 75 | Trespass/Theft of Pine Straw | Albertson |
| SB 102 | Bomb Threat/Felony | McDaniel |
| SB 202 | Gang Crime/Enhanced Penalties | Ballantine |
| SB 214 | Bomb Threat/Felony-2 | Ledbetter |
| SB 248 | Broughton Hospital Security Force | Dalton |
| SB 452 | Local Reg./Adult Entertainment | Cooper |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 248

Short Title: Broughton Hosp. Joint Security Force. (Public)

Sponsors: Senators Dalton; Albertson, Garwood, Hoyle, Kincaid, Weinstein, and Wellons.

Referred to: Judiciary.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE BROUGHTON HOSPITAL JOINT SECURITY FORCE.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 2A. Broughton Hospital Joint Security Force.

"**§ 122-430. Joint security force.**

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Broughton Hospital, North Carolina School for the Deaf, Western Regional Vocational Rehabilitation Facility, and the surrounding grounds and land adjacent to Broughton Hospital owned by the Department of Agriculture, all in Burke County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers shall also have the power prescribed by G.S. 7A-571(a)(4) outside the territory embraced by the named facilities but within the confines of Burke County. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has

committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

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

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April 3, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 248 - BROUGHTON HOSPITAL JOINT SECURITY FORCE** - Senator Dalton

The Proposed Committee Substitute for Senate Bill 248 authorizes the Secretary of the Department of Human Resources to appoint one or more special police officers to enforce laws, ordinances, and regulations on the property of Broughton Hospital, NC School for the Deaf, Western Regional Vocational Rehabilitation Facility, Western Carolina Center, and the surrounding grounds, and adjacent land held by the Department of Agriculture, in Burke County. It also makes a conforming change to the statute creating the Black Mountain Joint Security Force.

This bill will grant authority similar to that granted to other individual State mental health facilities, the Global Transpark Authority, Butner Public Safety, and the Black Mountain Joint Security Force.

Section 1 of the bill provides that special police officers appointed under this bill would have the same powers as now vested in the sheriff of Burke County once these officers have taken the oath required for law enforcement officers generally in North Carolina. While these officers are limited to enforcing the law within the territory specified in the bill, they may arrest a person outside of the territory if the crime was committed in the territory and the arrest is made during the person's immediate and continuous flight from the territory.

Section 2 of the bill makes a conforming change to the Black Mountain Joint Security Force by requiring that these special police officers take the standard oath required for all other law enforcement officers.

The bill would be effective when it becomes law.

S248-SMRU-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

## PART 2.
## BLACK MOUNTAIN JOINT SECURITY FORCE.

### § 122C-421. Joint security force.

(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(a)(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory.

(b) These special police officers may exercise any and all of the powers enumerated in this Part upon or in pursuit from the property formerly occupied by the Black Mountain Center and transferred to the Department of Correction by Senate Bill 388 and House Bill 709 of the 1985 Session of the General Assembly. These special police officers shall exercise said powers upon the property transferred to the Department of Correction only by agreement of the Departments of Correction and Human Resources.

(1983 (Reg. Sess., 1984), c. 1116, s. 30; 1985, c. 408, ss. 3, 5; c. 589, s. 2; 1995, c. 391, s. 3.)

**Editor's Note.** - Session Laws 1994, Extra Session, c. 24, s. 37, effective March 26, 1994, provides: "The Secretary of the Department of Human Resources shall designate the Director of the Juvenile Evaluation Center as the Director of the Joint Security Force established in G.S. 122C-421, serving the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County, and having the power prescribed by G.S. 7A-571(4) and G.S. 122C-421 outside the territory embraced by the named centers but within the confines of Buncombe County."

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."

**Effect of Amendments.** - The 1995 amendment, effective October 1, 1995, and applicable to physical custody exercised on or after that date, in subsection (a) substituted "G.S. 7A-571(a)(4)" for "G.S. 7A-571(4)" in the third sentence, and made a stylistic change in the last sentence.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S248-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 248
THIS IS A DRAFT 3-APR-97 09:42:05
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Broughton Hosp. Joint Security Force. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE BROUGHTON HOSPITAL JOINT SECURITY FORCE AND TO AMEND THE LAW ESTABLISHING THE BLACK MOUNTAIN JOINT SECURITY FORCE.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 2A. Broughton Hospital Joint Security Force.

"§ 122C-430. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Broughton Hospital, North Carolina School for the Deaf, Western Regional Vocational Rehabilitation Facility, Western Carolina Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture, all in Burke County. After taking the oath of office for law-

enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

Section 2. G.S. 122C-421(a) reads as rewritten:

"(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. ~~These~~ After taking the oath of office for law-enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(a)(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, April 03, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **248** Broughton Hospital Joint Security Force

| | |
|---|---|
| Draft Number: | PCS 2665 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

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April 3, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 452 - LOCAL REGULATION ADULT ENTERTAINMENT -** Senator Cooper

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 located; 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 of the bill 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, and may restrict ownership and employment by people with criminal records other than minor traffic offenses.

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 explicit businesses" as those that emphasize matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10 (a copy attached). This includes bars, restaurants, clubs, cabarets, other establishments offering topless or seminude dancing, adult bookstores, video rental facilities, adult theaters, adult films or video viewing establishments, massage parlors, saunas, baths or similar establishments.

Sections 2, 3, and 5 make conforming changes to various criminal statutes to make it clear that the criminal statutes do not override the local governments rights to regulate these establishments.

Section 4 amends the definition of "adult bookstore" to include rentals and videotapes, and clarifies how a "preponderance" is determined.

Section 6 makes it clear that the alcoholic beverage control laws to not override the right of local governments to regulate and license these adult entertainment businesses.

The bill is effective when it becomes law.

## ARTICLE 26A.
## Adult Establishments.

**§ 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, 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.)

**§ 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.

(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).)

**§14-202.11. Restrictions as to adult establishments.**

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.

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. (1977, c. 987, s. 1; 1985, c. 731, s. 2.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 452

Short Title: Local Regulation Adult Entertainment. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary.

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 and restrictions on ownership or employment by a person with a criminal record other than minor traffic offenses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations are 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 explicit businesses' include those characterized by their emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. This includes but is not limited to: bars, restaurants, clubs, cabarets, and other establishments offering topless or seminude dancing; adult bookstores and video rental facilities; adult theaters and viewing establishments for adult films or videos; and massage parlors, saunas, baths, and similar establishments. 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 nonobscene sexually-explicit speech or conduct."

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 explicit businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent permissible 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, videotapes, 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 (either in terms of the weight and importance of the material or in terms of greater volume of materials) 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."

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."

Section 6. G.S. 18B-1005 is amended by adding the following new subsection:

"(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."

Section 7. This act is effective when it become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

# SENATE BILL 7

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

Sponsors: Senators Cooper; Albertson, Cochrane, Dalton, Gulley, Hoyle, Jordan, Kerr, Lee, Lucas, Miller, Odom, Plyler, Rand, Reeves, Shaw of Cumberland, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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April 3, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 7 - INCREASE PENALTY FOR CERTAIN DRUG SALES**
Senator Cooper

**Subcommittee Recommendation: Favorable**

G.S. 90-95(a)(1) makes it unlawful for any person to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance. Senate Bill 7 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for the ***sale*** of certain controlled substances.

Senate Bill 7 would raise the felony offense class for the sale of a Schedule I or II controlled substance from Class H to Class G. Schedule I and II controlled substances include heroin, morphine, opium, LSD, and cocaine. Assuming prior record level I, the minimum presumptive sentence for a Class H felony is 5-6 months community, intermediate, or active punishment; a Class G felony is 10-13 months intermediate or active punishment.

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

Information provided by the Sentencing Commission indicates measurable impact beginning in 1999, with an additional 392 inmates. A copy of the fiscal note is attached. The bill would become effective December 1, 1997 and would apply to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 7 and HB 162 (Companion Bills) (First Edition)

**SHORT TITLE:** Increase Penalty for Certain Drug Sales

**SPONSOR(S):** Senator Cooper and Representative Crawford

### 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; applies to offenses committed on or after that date.

**BILL SUMMARY: S 7. INCREASE DRUG SALE PENALTIES.** *TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF CERTAIN CONTROLLED SUBSTANCES.* Amends GS 90-95(b) to (1) make the sale of a schedule I or II controlled substance a class G felony (was, class H felony), and (2) make the sale of a schedule III, IV, V, or VI controlled substance a class H felony (was, class I felony). Applies to offenses committed on or after Dec. 1, 1997.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction
Because this bill lengthens the possible sentence for sale of certain controlled sentences, it will increase the number of inmates in prison.

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | **June 30 1998** | **June 30 1999** | **June 30 2000** | **June 30 2001** | **June 30 2002** |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[1] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[2] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this Bill | **0** | **392** | **404** | **399** | **426** |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

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

[2] Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 2/19/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 426 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,

4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

The Judicial Branch projects they will be able to absorb any impact of this bill within existing resources, primarily because very few of charges for these offenses go to trial.

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Elisa Wolper
**APPROVED BY:** Tom L. Covington **TomC**
**DATE:** March 10, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 9

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors: Senators Miller; Albertson, Cochrane, Cooper, Dalton, Gulley, Jordan, Lee, Lucas, Odom, Perdue, Plyler, Rand, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**North Carolina General Assembly**
**Legislative Services Office**

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April 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **EMBEZZLEMENT / INCREASE PENALTY - Proposed Committee Substitute**
**Senate Bill 9** - Senator Miller
**House Bill 141** - Representative Justus

**Bill as Introduced:** Senate Bill 9/House Bill 141 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for certain embezzlement related offenses. Under current law, offenses of larceny by employees and obtaining property by false pretenses are classified as Class H felonies, and various other embezzlement offenses are classified as either Class F or Class H felonies. In general, Senate Bill 9/House Bill 141 would make embezzlement of property valued at $100,000 or more a Class C felony. Assuming prior record level I, the minimum presumptive sentence is 58-73 months active punishment for a Class C felony; as opposed to 10-13 months intermediate or active punishment for a Class F felony, or 5-6 months community, intermediate, or active punishment for a Class H felony.

**Subcommittee Recommendation:** A proposed committee substitute which leaves current Class F felonies at that level without regard to the value of the property involved. Embezzlement of State property by public officers and employees, Embezzlement of money, funds, securities, or other property by public officers and trustees (includes officials of local governments, charitable, religious or educational institutions who embezzle or otherwise "willfully and corruptly" use or misapply funds), and Embezzlement of taxes by officers are currently Class F felonies. Embezzlement offenses that are currently Class H felonies, will be Class F felonies if the property involved is valued at $100,000 or more.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(OVER)

The proposed committee substitute for Senate Bill 9/House Bill 141 affects the following offenses:

Section 1. Larceny by servants or other employees (person over 16 steals from employer)

Section 2. Embezzlement of property received by virtue of office or employment (person holds property in fiduciary capacity)

Section 3. Embezzlement by treasurers of charitable and religious organizations (lend moneys without consent, failure to account for moneys)

Section 4. Embezzlement by officers of railroad companies: money, bonds, or other valuable funds or securities

Section 5. Appropriation of partnership funds by partner to personal use

Section 6. Embezzlement by a surviving partner: property, money, or other effects

Section 7. Obtaining property by false pretenses (representation of a fact or event that is false and is calculated and intended to deceive another person in order to obtain something of value from that person)

Section 8. Misapplication, embezzlement of funds by bank officer and employees

Section 9. Embezzlement by insurance agents, brokers, or administrators: money, negotiable instruments or other consideration

Section 10. Embezzlement of preneed funeral funds

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

THIS IS A DRAFT
S9-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE FOR
SENATE BILL 9

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H felon:~~ guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class F felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

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

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

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

Section 3. G.S. 14-93 reads as rewritten:

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 9 and House Bill 141

**SHORT TITLE:** Embezzlement/Increase Penalty

**SPONSOR(S):** Senator Miller and Representative Justus

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| GENERAL FUND | | | | | |
| Correction | | | No Fiscal Impact | | |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| Judicial | | | No Reliable Estimate Available | | |
| 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:** Applies to offenses committed on or after December 1, 1997.

**BILL SUMMARY:** EMBEZZLEMENT/INCREASE PENALTY. *TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.* Amends various statutes to make embezzlement of money, goods or property with a value of $100,000 or more a class C felony. Makes embezzlement of money, goods, or property with a value of less than $100,000 a class F felony (with respect to violations of GS 14-91,14-92, and 14-99 or a class H felony (with respect to violations of GS 14-74, 14-90, 14-

93, 14-94, 14-97, 14-98, 53-129, 58-2-162, and 90-210.70(a)). Applies to offenses committed on or after Dec. 1, 1997.[1]

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | **June 30 1998** | **June 30 1999** | **June 30 2000** | **June 30 2001** | **June 30 2002** |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[2] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[3] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this Bill | 0 | 13 | 42 | 77 | 113 |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 113 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

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[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 2 & No. 10.

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

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

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above):

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,

4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

**ASSUMPTIONS AND METHODOLOGY:** Judicial Department

In 1996, over 8,300 defendants were charged with offenses covered under this bill. The Judicial Branch has no data on the value of property involved. They estimate that only a small percentage of these cases involve amounts of $100,000 or more. The Financial Crimes Unit of the State Bureau of Investigation (SBI) estimates that 10% to 15% of the cases they handle involve amounts of $100,000 or more. However, the Financial Crimes Unit receives - from the eight field units across the state - referral on only the most complex financial cases. The field units, themselves, may handle some less complex cases involving amounts over $100,000. Since the field units' financial crimes data are not organized by dollar amount, the Judicial Branch is unable to obtain an estimate of the actual incidence of financial crimes of $100,000 or more. Although the numbers may be small, even a few new Class C trials may have a fiscal impact on the Judicial Branch. Based on the information provided by the Judicial Branch, Fiscal Research staff cannot reliably estimate the fiscal impact of this bill on the Court System.

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

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**
733-4910
**PREPARED BY:** Andy Willis
**APPROVED BY:** Tom L. Covington
**DATE:** March 11, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 141*
Committee Substitute Favorable 2/26/97

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**North Carolina General Assembly**
**Legislative Services Office**

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April 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **AMEND ACCESSORY AFTER THE FACT**
**Senate Bill 10** - Senator Reeves
**House Bill 142** - Representative Justus

**Subcommittee Recommendation: Favorable**

Senate Bill 10/House Bill 142 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would reclassify the offense of accessory after the fact to a felony. A person commits the offense when he or she, knowing that another person has committed a crime, assists that person in escaping or attempting to escape detection, arrest or punishment after the felony was committed. Under current law, accessory after the fact to any felony is punishable as a Class H felony. Assuming prior record level I, the minimum presumptive sentence for a Class H felony is 5-6 months community, intermediate or active punishment.

Senate Bill 10 would relate accessory after the fact offenses to the seriousness of the principal offense by classifying the offense of accessory after the fact two classes lower than the underlying felony itself. The bill would make accessory after the fact to a Class A or B1 felony (1st degree murder, 1st degree rape, or 1st degree sexual offense) a Class C felony. Assuming prior record level I, the minimum presumptive sentence for a Class C felony is 58-73 months active punishment.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 10

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

Sponsors: Senators Reeves; Cooper, Gulley, Hoyle, and Miller.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 142*

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

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

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 10 and House Bill 142 (Companion Bills)

**SHORT TITLE:** Accessory After the Fact Penalty

**SPONSOR(S):** Senator Reeves and Representative Justus

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **GENERAL FUND** | | | | | |
| **Correction** | | | | | |
| Recurring | (No Fiscal Impact Above Existing Resources) | | | | |
| Nonrecurring | | | | | |
| **Judicial** | | | | | |
| Recurring | (No Estimate Available) | | | | |
| 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:** Offenses committed on or after December 1, 1997.

**BILL SUMMARY:** Amends GS 14-7 to provide that the punishment (1) for the offense of accessory after the fact to a class A or B1 felony is a class C felony, (2) for the offense of accessory after the fact for a class B2 felony is a class D felony, (3) for the offense of accessory after the fact to a class H felony is a class 1 misdemeanor, (4) for the offense of accessory after the fact to a class I felony is a class 2 misdemeanor, and (5)

unless a different classification is expressly stated, for the offense of accessory after the fact to any other felony is two classes lower than the felony that the principal felon committed.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | June 30 1998 | June 30 1999 | June 30 2000 | June 30 2001 | June 30 2002 |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[1] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[2] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this Bill | **0** | **29** | **53** | **93** | **118** |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 118 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

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

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

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above); The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;
3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

**ASSUMPTIONS AND METHODOLOGY:** Judicial Department

Currently, fewer than 200 defendants per year are convicted of accessory after the fact penalties. The Judicial Department, however, is unable to estimate how many of these individuals may be affected because they have no on the class of the principle offense for defendants charged with accessory after the fact. The Department anticipates additional trials may result in cases where there is a substantial elevation of the offense class. However, since there is no data on the class of the principle class, no fiscal estimate is available for the court system at this time.

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

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Charles Perusse
**APPROVED BY:** Tom L. Covington
**DATE:** March 10, 1997

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April 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **VOLUNTARY MANSLAUGHTER / CLASS D FELONY**
**Senate Bill 11** - Senator Gulley
**House Bill 144** - Representative Justus

**Subcommittee Recommendation: Favorable**

Senate Bill 11/House Bill 144 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for voluntary manslaughter. Voluntary manslaughter is distinguished from second-degree murder by the absence of malice.

Under current law, voluntary manslaughter is punishable as a Class E felony. Senate Bill 11 would raise the felony offense class for voluntary manslaughter from E to Class D. Assuming prior record level I, the minimum presumptive sentence for a Class E felony is 20-25 months intermediate or active punishment; and 51-64 months active punishment for a Class D felony. (By comparison, 1st degree murder is Class A, 2nd degree murder is Class B2, involuntary manslaughter is Class F)

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 11

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

Sponsors: Senators Gulley; Albertson, Cooper, Dannelly, Foxx, Hoyle, Kerr, Lee, Lucas, Miller, Odom, Perdue, Phillips, Plyler, Rand, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 144*

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

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

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 11 and House Bill 144 (Companion Bills)

**SHORT TITLE:** Voluntary Manslaughter/Class D Felony

**SPONSOR(S):** Senator Gulley and Representative Justus

### 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 Above Existing Resources) | | | | |
| **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:** Applies to offenses committed on or after December 1, 1997.

**L SUMMARY:** Amends GS 14-18 by increasing the penalty of voluntary manslaughter from a class E to a s D felony as recommended by the Sentencing Commission.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates ected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | June 30 1998 | June 30 1999 | June 30 2000 | June 30 2001 | June 30 2002 |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[1] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[2] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| of Projected itional Inmates Due to this Bill | **0** | **27** | **31** | **97** | **176** |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 176 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);

---

[1] The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured Sentencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the t scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

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

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;
3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,
4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

**ASSUMPTIONS AND METHODOLOGY:** Judicial Department

Judicial Department data indicates that few defendants are charged with voluntary manslaughter, and most often , these convictions result from pleas when a more serious offense was charged. The Department anticipates that the increase in punishment may affect the decision to plead in a few cases and result in additional trials. However, they believe this number of trials would be very small and could be absorbed within existing court resources statewide.

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

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Charles Perusse
**APPROVED BY:** Tom L. Covington
**DATE:** March 10, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 14

Short Title: Reclassify Prison Offenses. (Public)

Sponsors: Senators Jenkins; Albertson, Cooper, Dalton, Gulley, Hoyle, Kerr, Lucas, Miller, Odom, Perdue, Phillips, Rand, Warren, Weinstein, and Wellons.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE A PERSON IS INCARCERATED.

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. 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 5. 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 6. G.S. 90-95(b) reads as rewritten:

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

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

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished

as a Class H felon. ~~but the~~ The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1)."

Section 7. This act becomes effective December 1, 1997, and applies to offenses on or after that date.

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April 3, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 14 - RECLASSIFY PRISON OFFENSES**
Senator Jenkins

**Subcommittee Recommendation:** Committee substitute corrects drafting error.

Senate Bill 14 would increase the penalty for various offenses committed while a person is incarcerated. Classifying an offense as a Class H felony gives a judge the option of imposing an active sentence in every case.

Section 1 makes it a Class 1, rather than a Class 3 misdemeanor for a prisoner who is on work detail for a county to escape from custody.

Section 2 makes it a Class H felony (currently I) for a prisoner to break out of a county or city jail if the person has been convicted of a felony.

Section 3 makes it a Class 1 misdemeanor (currently Class I felony) for a first offense of escape if the person is a misdemeanant; a felon or a person previously convicted of escaping or attempting to escape would be punished as a Class H (currently I) felon.

Section 4 makes possession of a controlled substance on the premises of a prison or jail a Class H (currently I) felony.

Section 5 makes it a Class H (currently I) felony for a prisoner to intentionally injure himself in order to avoid work or other assigned duties.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S14-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 14
THIS IS A DRAFT 31-MAR-97 16:05:42
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Reclassify Prison Offenses. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE A PERSON IS INCARCERATED.

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. 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 5. 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 6. This act becomes effective December 1, 1997, and applies to offenses on or after that date.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** SB 14

**SHORT TITLE:** **Reclassify Prison Offenses**

**SPONSOR(S):** Senator Jenkins; Miller

### 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

**BILL SUMMARY:** This bill increases or changes criminal penalties for escape from prison or local confinement facilities -- escapes of working prisoners from custody would be increased from a Class 3 demeanor to a Class 1; escapes from confinement in State prisons would be changed from a Class I felony to a Class I misdemeanor for misdemeanants and from a Class I to Class H for felons; escapes from local confinement facilities would be increased from a Class I to H if the offender was convicted of a felony and pending transfer to a State prison or is serving a sentence for a felony. In essence, the bill allows the judges in each instance to sentence inmates to additional prison time..

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | **June 30 1998** | **June 30 1999** | **June 30 2000** | **June 30 2001** | **June 30 2002** |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[1] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[2] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this Bill | 0 | 27 | 30 | 32 | 31 |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

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

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

s shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 31 ıates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this ɔill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,

4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission commendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 ıates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated ɔlus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.
Funds for the close custody beds are budgeted 3 years in advance, while funds for the medium and minimum custody beds are budgeted 2 years in advance, to allow adequate time for planning and construction.

JUDICIAL DEPARTMENT

**ASSUMPTIONS AND METHODOLGY:** The Judicial Branch indicates that increasing criminal penalties could result in more vigorous litigation and thus more court time and cost. However, it is anticipated that the number of cases will be small enough to be absorbed statewide.

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

**TECHNICAL CONSIDERATIONS:** None

FISCAL RESEARCH DIVISION
-4910
EPARED BY: Jim Mills
APPROVED BY: Tom L. Covington
DATE: March 19, 1997

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# 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.

**North Carolina General Assembly**
**Legislative Services Office**

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April 3, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 29 - INCREASE PENALTY/PYRAMID SCHEMES**
Senator Jordan

**Subcommittee Recommendation: Favorable**

Senate Bill 29 is a recommendation of the LRC Consumer Protection Issues Committee. It would increase the penalty for establishing or operating a pyramid distribution plan.

Under current law, it is a Class 2 misdemeanor to establish, promote, operate or participate in any pyramid distribution plan. The bill would make it a Class H felony to establish or operate a pyramid distribution plan. The penalty for participating in or otherwise promoting such a plan remains a Class 2 misdemeanor. The bill 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 December 1, 1997 and apply to offenses occurring on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 29*

Short Title: Increase Penalty/Pyramid Schemes. (Public)

Sponsors: Senators Jordan and Gulley.

Referred to: Judiciary.

February 3, 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 FISCAL NOTE

**NUMBER:** Senate Bill 29 and House Bill 27 (Companion Bills)

**SHORT TITLE:** Increase Penalty / Pyramid Schemes

**SPONSOR(S):** Senator Jordan and Representative Thompson

### 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:** Applies to offenses committee on or after date act becomes law.

**BILL SUMMARY:** TO INCREASE THE PENALTY FOR THE ESTABLISHMENT OF PYRAMID DISTRIBUTION PLANS. Amends GS 14-291.2 by raising the penalty from a class 2 misdemeanor to a class H felony. Applies to offenses committed on or after date act becomes law.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction and Judicial Branch

Currently, the Judicial Branch does not have a specific code for offenses relating to pyramid schemes. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect that the proposed changes would have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals were convicted of these offenses per year approximately 1 or 2 additional inmates would be added to the prison population. If there were as many as 30 convictions no more than 3 to 6 additional inmates would be added to the prison system. These few potential additional inmates could be absorbed within existing Department of Correction resources.

Likewise, there would not be a significant fiscal impact on the Judicial Branch as there would not be any major changes in how cases are processed or disposed. The Judicial Department could absorb these few potential new cases within existing resources.

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Charles Perusse
**APPROVED BY:** Tom L. Covington
**DATE:** March 10, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 75

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

Sponsors: Senators Albertson; Hoyle, Jordan, Kerr, Odom, Rand, Warren, and Weinstein.

Referred to: Judiciary.

February 10, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 66*
Committee Substitute Favorable 2/25/97

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.

**North Carolina General Assembly**
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March 11, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **TRESPASS/THEFT OF PINE STRAW**
**Senate Bill 75** - Senator Albertson
**House Bill 66** - Representative Brown

**Subcommittee Recommendation: Committee substitute**

Senate Bill 29 would establish the offenses of trespass to remove pine straw and larceny of pine straw.

Under current law, it is a Class 2 misdemeanor to enter secured premises (includes fenced areas); it is a Class 3 misdemeanor to enter posted premises. It is a Class 2 misdemeanor to enter posted premises to hunt, fish, or trap without written consent of the owner.

The original bill would make it a Class 1 misdemeanor to enter land posted with notices prohibiting raking or removing of pine straw; a second or subsequent offense would be a Class I felony. The committee substitute eliminates the felony trespass, and makes the pine straw production land trespass offense a Class 2 misdemeanor in all cases.

The bill also creates the offense of larceny of pine straw as a Class H felony.

The bill would become effective January 1, 1998 and apply to offenses occurring on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S75-CSRV-001
**PROPOSED COMMITTEE SUBSTITUTE**
SENATE BILL 75
**THIS IS A DRAFT 2-APR-97 14:32:59**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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

Sponsors:

Referred to:

February 10, 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 2 misdemeanor."

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.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 75

**SHORT TITLE:** Trespass / Theft of Pine Straw

**SPONSOR(S):** Senator Albertson

### 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:** January 1, 1998

**BILL SUMMARY:** TO ESTABLISH THE OFFENSES OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW. Amends GS 14-159.6 and 14-79.1 to increase the penalties throughout the state for offenses involving pine straw. Makes trespassing on land used for the production of pine

straw a class 1 misdemeanor for a first offense, and a class I felony for a subsequent offense. Makes it a class H felony to commit larceny of pine straw from land used for its production, regardless of the value of the pine straw ·n. Applies to offenses committed on or after January 1, 1998.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

Currently, the Judicial Branch does not have a specific code for offenses relating to theft of pine straw. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect that the proposed changes would have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals were convicted of these offenses per year approximately 1 or 2 additional inmates would be added to the prison population. If there were as many as 30 convictions no more than 3 to 6 additional inmates would be added to the prison system. These few potential additional inmates could be absorbed within existing Department of Correction resources.

Likewise, there would not be a significant fiscal impact on the Judicial Branch as there would not be any major changes in the time required to process or dispose of these cases.

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

**TECHNICAL CONSIDERATIONS:**

CAL RESEARCH DIVISION
6-4910
**PREPARED BY:** Charles Perusse Charles Perusse
**APPROVED BY:** Tom L. Covington
**DATE:** March 10, 1997

ENVIRONMENTAL
DEFENSE FUND

*North Carolina EDF*
128 East Hargett St.
Raleigh, NC 27601
(919) 821-7793
*Fax: 919-821-5093*

April 2, 1997

The Honorable Roy A. Cooper, III
Chairman, Senate Judiciary Committee
North Carolina General Assembly
Room 2117
Legislative Building
Raleigh, NC 27601-2808

RE: **S.B. 75 (H.B. 66) – Trespass/Theft of Pine Straw**

Dear Senator Cooper,

We support the substitute bill for S.B. 75 (H.B. 66) as reported out of the Senate Judiciary Subcommittee on Criminal Laws. The bill addresses theft of pine straw, a serious economic and environmental concern in the Sandhills of North Carolina. We urge you to give a favorable report to this bill.

The bill protects only land that has been properly posted (in accordance with G.S. 14-159.7) as a pine straw production area. Pine straw is a valuable forest product that provides significant income to area landowners and business opportunities for legitimate pine straw harvesters. As the value of pine straw has increased due to its growing demand as a landscaping and mulching material, theft of pine straw has become an increasingly serious problem. Pine straw sales are estimated at $51 million a year, while pine straw thefts are estimated at an alarming $8 million annually.

Without appropriate protection, landowners will continue to lose significant revenue through pine straw theft, and legitimate small businesses will be deprived of opportunities to make a livelihood. We believe that the penalties associated with the larceny of pine straw from a landowner's posted property are both reasonable and consistent with other acts of larceny. While this bill should not have any impact on an already over-burdened penal system, it could have a dramatic impact as a deterrent against the theft of pine straw. In fact, since the recent adoption of a similar bill protecting against larceny of ginseng (G.S. 14-79), there has been a marked decrease in ginseng theft.

In addition to protecting against economic losses presently suffered by landowners, S.B. 75 (H.B. 66) also offers a valuable tool in the fight to protect one of North Carolina's endangered species, the red-cockaded woodpecker. The longleaf pine trees in the Sandhills of North Carolina represent an essential component of a rapidly diminishing ecosystem in the southeastern U.S. As well as producing the highly desired pine needles, mature longleaf pine trees provide the habitat that the red-cockaded woodpecker relies on for both foraging and nesting. The revenue from pine straw provides a powerful incentive for forest landowners to maintain long leaf pine on

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their property, thereby providing important wildlife habitat and other environmental benefits. Without adequate protection, landowners who are now voluntarily protecting important wildlife habitat through pine straw production may find it economically impossible to continue doing so.

If you have any questions, or would like to discuss this information in more detail, we would welcome your call.

Sincerely,

Doug Rader, Ph.D.
Senior Scientist

Jane Preyer
Public Policy Specialist

cc: The Honorable Marc Basnight
The Honorable John Brown
Members of the Senate Judiciary Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 102

Short Title: Bomb Threat/Felony. (Public)

Sponsors: Senators McDaniel; Ballantine, Foxx, and Winner.

Referred to: Judiciary.

February 12, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



HOUSE BILL 267*
Second Edition Engrossed 3/6/97

Short Title: Bomb Threat/Felony. (Public)

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

Referred to: Judiciary I.

February 18, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

**North Carolina General Assembly**
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April 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **BOMB THREAT/FELONY**
**Senate Bill 102** - Senator McDaniel
**Senate Bill 214** - Senator Ledbetter
**House Bill 267** - Representative Sherrill

**Subcommittee Recommendation: Committee Substitute classifies the offenses as Class H felonies, to give the judge the option of imposing an active sentence.**

Three bills would increase the penalties for the offenses of falsely reporting a bomb and of perpetuating a hoax by using a false bomb.

Under current law, a false bomb threat or planting a false bomb is a Class 1 misdemeanor. Senate Bill 102 would make the offenses Class I felonies, Senate Bill 214 and House Bill 267 would make them Class G felonies. The subcommittee recommends classifying the offenses as Class H felonies.

The presumptive minimum sentence in prior record level I for a Class I felony is 4-6 months community punishment; Class G felony is 10-13 months intermediate or active; Class H felony is 5-6 months community, intermediate, or active.

By comparison, malicious damage by use of an explosive or incendiary device is a Class G felony. Malicious damage of occupied property by use of an explosive or incendiary device is a Class D felony; willful injury to a person by use of explosive material is a Class D felony.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S102-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 102
THIS IS A DRAFT 2-APR-97 15:12:50
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Bomb Threat/Felony. (Public)

Sponsors:

Referred to:

February 12, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

~~guilty of a Class 1 misdemeanor, punishable by a minimum of 100 hours of mandatory community service. Upon a second or subsequent conviction under this subsection, he shall be guilty of a Class I felony.~~"

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

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

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

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

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

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 102

**SHORT TITLE:** Bomb Threat/Felony

**SPONSOR(S):** Senators McDaniel; Ballentine, Foxx, and Winner

### FISCAL IMPACT

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

**(in millions)**

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

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

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

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

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

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

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction and Judicial Branch

During calendar year 1996, there were thirty five (35) convictions for making a false report concerning destructive devices, GS 14-69.1, and no convictions for perpetrating a hoax by use of false bomb or other device, GS 14-69.2. Assuming that there continues to be about 35 convictions per year (the average over the past five years has been 28.2 per annum), then this proposal would add a **maximum** of three offenders to the average daily prison population. This estimate assumes that sentences for this crime follow the same pattern as sentences for other class I felonies and further assumes that there are not incapacitative or deterrent effects. These few potential additional inmates could be absorbed within Department of Correction resources by 1997-98, when bed capacity will be expanded and when this bill's impact will first be felt.

Likewise, there would not be a significant fiscal impact on the Judicial Branch, as there would not be any major changes in the time required to process or dispose of these cases. The Court Information System has no offense code for GS 14-69.2. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. If, as a result of a possible felony conviction, some of these defendants were to change their defense strategy and ask for a trial in Superior Court, the Judicial Branch believes that the impact of these few additional trials would not be substantial.

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

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Andy Willis
**APPROVED BY:** Tom L. Covington
**DATE:** February 18, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 202

Short Title: Gang Crime/Enhanced Penalties. (Public)

Sponsors: Senators Ballantine; Hoyle and McDaniel.

Referred to: Judiciary.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR GANG-RELATED CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 61.

"Street Terrorism Enforcement and Prevention Act.

"**§ 14-460. Definitions.**

The following definitions apply in this Article:

(1) Criminal street gang. -- A formal or informal ongoing organization, association, or group of three or more persons who:

a. Have a common name or common identifying signs, colors, or symbols;

b. Have member or associates who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

(2) Criminal street gang member. -- A person who engages in a pattern of criminal street gang activity and meets two or more of the following criteria:

a. Admits to criminal street gang membership.

b. Is a youth under the age of 21 years who is identified as a criminal street gang member by a parent or legal guardian.

c. Is identified as a criminal gang member by a documented reliable informant.

d. Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.

e. Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

f. Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.

g. Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.

h. Has been stopped in the company of known criminal street gang members four or more times.

(3) Pattern of criminal street gang activity. The commission, attempted commission, or solicitation, by any member of a criminal street gang, of two or more felony or violent misdemeanor offenses, or two or more delinquent acts or violations of law that would be felonies or violent misdemeanors if committed by an adult, on separate occasions within a three-year period.

**"§ 14-461. Legislative findings and intent.**

(a) The General Assembly finds that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly finds, however, that the State is facing a mounting crisis caused by criminal street gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

(c) It is the intent of the General Assembly to eradicate the terror created by criminal street gangs and criminal street gang members by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, or property which facilitates criminal street gang activity.

**"§ 14-462. Pattern of criminal street gang activity, reclassified penalties.**

(a) A person who commits a felony and who was a member of a criminal street gang at the time of the offense that meets the criteria of a pattern of criminal street gang activity is guilty of a felony that is one class higher than the felony committed.

(b) A person who commits a misdemeanor who was a member of a criminal street gang at the time of the offense that meets the criteria of a pattern of criminal street gang activity is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense was a Class A1 misdemeanor, then the defendant is guilty of a Class I felony.

"**§ 14-463. Civil cause of action.**

Any person or organization which establishes by clear and convincing evidence that it has been coerced, intimidated, threatened, or otherwise harmed in violation of this Chapter shall have a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorneys' fees and costs.

"**§ 14-464. Profits, proceeds, and instrumentalities of criminal street gangs; forfeiture.**

Any profits, proceeds, or instrumentalities of criminal activity or any property used, intended, or attempted to be used to facilitate criminal activity of any criminal street gang member shall be subject to seizure and forfeiture.

"**§ 14-465. Crime data information.**

Crime information obtained pursuant to this Chapter shall be reported to the Department of Justice."

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

**North Carolina General Assembly**
**Legislative Services Office**

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April 3, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **GANG CRIME/ENHANCED PENALTIES**
**Senate Bill 202** - Senator Ballantine

**Subcommittee Recommendation: Committee Substitute**

Senate Bill 202 would enhance the punishment imposed for gang-related criminal offenses.

The bill as introduced would make a person who commits a felony and who was a member of a criminal street gang at the time of the offense guilty of a felony or misdemeanor one class higher than the underlying offense.

The subcommittee recommends a committee substitute that would make gang involvement in the offense an aggravating factor for sentencing purposes.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S202-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 202
THIS IS A DRAFT 2-APR-97 15:21:16
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Gang Crime/Enhanced Penalties (Public)

Sponsors:

Referred to:

February 20, 1997

A BILL TO BE ENTITLED AN ACT TO ADD TO THE LIST OF AGGRAVATING FACTORS THE OFFENSE WAS COMMITTED IN ASSOCIATION WITH A CRIMINAL STREET GANG.

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.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a

conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors or symbols.

(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 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.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 202

**SHORT TITLE:** Gang Crime / Enhanced Penalty

**SPONSOR(S):** Senators Ballantine, Hoyle, and McDaniel

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **GENERAL FUND** | | | | | |
| **Correction** | | | | | |
| | | | **No Estimate Available** | | |
| **Judicial** | | | | | |
| **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

**BILL SUMMARY:** *TO ENHANCE THE PUNISHMENT IMPOSED FOR GANG-RELATED CRIMINAL OFFENSES.* Adds new GS 14-462 to provide that person who commits felony and who was member of criminal street gang at time of offense that meets criteria of pattern or criminal street gang activity is guilty of felony that is one class higher than felony committed. Provides corresponding increase in punishment for misdemeanors, except class A1 misdemeanor is elevated to class I felony. Defines "criminal street gang" as formal or informal ongoing organization of three or more people who (1) have common name or identifying signs, colors, or symbols, and (2) have members or associates who, individually or collectively, engage in or have engaged in pattern of criminal street gang activity. Defines "pattern of criminal street gang activity" as commission,

attempted commission, or solicitation, by any member of criminal street gang of two or more felony or violent misdemeanor offenses or two or more delinquent acts or violations of law that would be felonies or violent misdemeanors if committed by adult, on separate occasions within three-year period. Provides definition of "criminal street gang member." Includes provisions regarding civil cause of action, forfeiture of profits, and reporting of crime information to Dep't of Justice. Applies to offenses committed on or after Dec. 1, 1997.[1]

**ASSUMPTIONS AND METHODOLOGY:** Judicial Department and Department of Correction

The Administrative Office of the Courts (AOC) does not collect data on crimes related to gang activity. In addition, the State Bureau of Investigation does not have any specific information on crimes committed by gang members even though gang activity has been reported in 40 counties over the past several years. The AOC anticipates this bill may produce additional trials since it increases the offense class of crimes by one level when committed by gang members. However, having no data on either the numbers or severity of street gang crimes, the AOC is unable to estimate the magnitude of the costs of such trials.

Since the AOC does not collect data related to gang crime activity, the Sentencing Policy and Advisory Commission cannot estimate how many offenders will be charged and convicted of this crime. Therefore, the Sentencing Commission cannot estimate the effects of this bill on the prison system. Due to the lack of available data and the assumptions outlined by the AOC and the Sentencing Commission, Fiscal Research staff cannot reliably estimate the fiscal impact of this bill.

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

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Charles Perusse
**APPROVED BY:** Tom L. Covington **TomC**
**DATE:** March 31, 1997

[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 14.

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 3, 1997**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Anza Mitchell | St. Augustine College |
| Johnette C Gaines | Saint Augustine's College |
| Tawana Isaac | " " |
| Desiree Biggs | St. Augustine's College |
| Johnelse Fennell | St. Augustine's College |
| Nyishah Davis | St. Augustine's College |
| Karla Best | St. Augustine's College |
| Roshandia N. Campbell | St. Augustine's College |
| Magn Nyang | St. Augustine's College |
| Leticia Y. Doctor | St. Augustine's College |
| Latonya Munson | " |
| Natasha N. Samuels | St. Augustine's College |
| Megan Carney | Meredith College - BSW Student |
| [illegible] | DMHDDSAS |
| Steve Johnson | " |
| [illegible] | NC Farm Bureau |
| Debbie Meagher | NC Sentencing Commission |
| TANJA VUJIC | NC ENVIRONMENTAL ~~DEFENSE~~ FUND |
| David Owens | Inst. of Govt, UNC-CH |
| Whitney Obrig | DMHDDSAS |
| Laura Hartsell | MCIC |
| [illegible] | SCSL |
| [illegible] | NCATL |
| [illegible] | |
| [illegible] | NCBA |
| [illegible] | Smith Anderson |

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — Name of Committee

**April 3, 1997** — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Bernard Allen | SOS |
| David Ferrell | Hofler, McNamara, Caldwell, McElroy & Cotta, PA |
| Eddie Caldwell | NCSA / NCLEOA |

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, April 03, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **142** Amend Accessory After the Fact
Sequential Referral: None
Recommended Referral: Appropriations

H.B. **144** Voluntary Manslaughter/Class D Felony
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **7** Increase Penalty for Certail Drug Sales
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **10** Amend Accessory After the Fact
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **11** Voluntary Manslaughter/Class D Felony
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **29** Increase Penalty/Pyramid Schemes
Sequential Referral: None
Recommended Referral: Appropriations

TOTAL REPORTED: 6

Committee Clerk Comment: Will have Sen. Cooper sign

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, April 07, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **158** Commit Offenses in Prison/Up Penalty
Sequential Referral: None
Recommended Referral: Appropriations

H.B. **159** Escape from Prison/Reclassify Offenses
Sequential Referral: None
Recommended Referral: Appropriations

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **9** Embezzlement/Increase Penalty
Draft Number: PCS 1700
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

S.B. **14** Reclassify Prison Offenses
Draft Number: PCS 7690
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

S.B. **75** Trespass/Theft of Pine Straw
Draft Number: PCS 1699
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

S.B. **102** Bomb Threat/Felony
Draft Number: PCS A664
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: Yes

S.B. **202** Gang Crime/Enhanced Penalties

| | |
|---|---|
| Draft Number: | PCS 7689 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **66** Trespass/Theft of Pine Straw

| | |
|---|---|
| Draft Number: | PCS 1236 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | No |

TOTAL REPORTED: 8

Committee Clerk Comment: Will have Sen. Cooper sign

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**APRIL 8, 1997**

The Senate Judiciary Committee met on Tuesday, April 8, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and asked that Senator Miller preside.

Senator Cooper was recognized to continue the discussion of **Senate Bill 452** - AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

Senator Cooper moved to adopt a Proposed Committee Substitute for Senate Bill 452 for discussion. The motion carried by voice vote.

Dave Owens, with the Institute of Government, was recognized to answer questions from the Committee.

Senator Blust moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Gulley was recognized to explain **Senate Bill 381** - AN ACT TO ESTABLISH A SYSTEM OF COMPLETE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.

The following people were recognized to speak on the bill:

Marion Dodd, League of Women Voters
Lenise Williams, N. C. Fair Share
Cye King, N. C. Council of Churches
Barbara Earles, Cary, N. C.
Tom Collson, Madison County, N. C.

After a brief discussion by the Committee, Senator Cooper announced that the bill would be back before the Committee at a future meeting.

There being no further business, the meeting adjourned at 11:00 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# SENATE JUDICIARY COMMITTEE
# APRIL 8, 1997

## AGENDA

| | | |
|---|---|---|
| SB 240 | Limit Fundraising in Session | Gulley |
| SB 381 | N. C. Clean Election Act | Gulley |
| SB 452 | Local Reg. Adult Entertainment | Cooper |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 452

Short Title: Local Regulation Adult Entertainment. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary.

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 and restrictions on ownership or employment by a person with a criminal record other than minor traffic offenses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations are 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 explicit businesses' include those characterized by their emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. This includes but is not limited to: bars, restaurants, clubs, cabarets, and other establishments offering topless or seminude dancing; adult bookstores and video rental facilities; adult theaters and viewing establishments for adult films or videos; and massage parlors, saunas, baths, and similar establishments. 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 nonobscene sexually-explicit speech or conduct."

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 explicit businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent permissible 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, videotapes, 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 (either in terms of the weight and importance of the material or in terms of greater volume of materials) 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."

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."

Section 6. G.S. 18B-1005 is amended by adding the following new subsection:

"(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."

Section 7. This act is effective when it become law.

# North Carolina General Assembly
# Legislative Services Office

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April 8, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 452 - LOCAL REGULATION ADULT ENTERTAINMENT** - Senator Cooper

The Proposed Committee Substitute for 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 located; 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 of the bill 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 explicit 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).

Sections 2, 3, and 5 make conforming changes to various criminal statutes to make it clear that the criminal statutes 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 it clear that the alcoholic beverage control laws to 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.

ARTICLE 26A.
Adult Establishments.

**§ 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, 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.)

**§14-202.11. Restrictions as to adult establishments.**

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.

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. (1977, c. 987, s. 1; 1985, c. 731, s. 2.)

**§ 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.

(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).)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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S452-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 452
THIS IS A DRAFT 7-APR-97 15:12:07
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 are 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~~ (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 become law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 09, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **452** Local Regulation Adult Entertainment

| | |
|---|---|
| Draft Number: | PCS 8631 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

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April 8, 1997

TO: Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Senate Bill 381 – Clean Campaign Act.

**Senate Bill 381, introduced by Senator Gulley, would provide comprehensive public funding to candidates who agree to limit spending. The bill would go into effect for candidates in the year 2000 for Governor, Lieutenant Governor, other Council of State offices, and General Assembly.**

Candidates for those offices would have the choice of participating in the Clean Election Act or of financing their campaigns with no spending limits. But the system is designed to provide enough public funding that candidates of ordinary wealth would want to choose it.

To participate in the Clean Election Act, a candidate must:

1. Demonstrate outreach abilities and public support from those who will be voting for the office by collecting a specified number of $5 qualifying contributions:
   - 6,000/Governor.
   - 3,000/Lt. Gov. and other Council of State.
   - 300/State Senate.
   - 200/State House.

2. Agree not to spend private money on the campaign.

3. Agree to strict spending limits designed to be practical but also to control the growth of campaign costs.

A candidate who is certified to participate in the North Carolina Clean Elections option would:

- Receive a specific amount of funding based upon the average amount spent over the last two election cycles. All participating candidates for the same office would get the same amount. That would be all that candidate could spend, unless outspent by a nonparticipating opponent.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(OVER)

- Receive an additional amount of matching funding, if the candidate is outspent by nonparticipating opponents. These rescue funds could go up to a ceiling of double the Act's regular spending limits. (This provision would also match independent expenditures against the participating candidate.) This provision is a recognition that, under the U.S. Supreme Court rulings in *Buckley v. Valeo* and more recent cases, there can be no involuntary limits placed on spending by a billionaire or on independent expenditures.

- Return all unspent funds to the N.C. Clean Elections Fund.

The Clean Elections option would be financed by qualifying contributions of the candidates, by voluntary contributions, and by appropriations the General Assembly would be directed to make from the General Fund. The balance and the financing mechanism of the existing N.C. Candidates Financing Fund would be converted to the Clean Elections Fund. The Candidates Financing Fund has brought in $230,145 since 1988 through taxpayer contributions of their refunds on the State Income Tax Return and other contributions.

*(The bill would not affect the N.C. Political Parties Financing Fund, which is supported by a $1 checkoff on the State Income Tax Return and goes to the two major parties.)*

The Act would be administered by a newly created Commission on Election Practices. The Commission would consist of five members. They would be appointed by the Governor and confirmed by the General Assembly. No more than two commissioners could be members of the same political party and none could be elected officials or candidates. The Act would direct the Governor, with the advice and consent of the legislative leadership, to set up a nomination period to bring forth qualified individuals for appointment.

Effective immediately, the Act would change the current system by reducing the contribution limitation from $4,000/donor/donee/election to $500. It would also remove the exemption that political parties now have from the contribution limitation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 381

Short Title: N.C. Clean Election Act. (Public)

Sponsors: Senators Gulley; Ballance, Dannelly, Forrester, Jordan, Kinnaird, Lee, Lucas, Martin of Guilford, Miller, Odom, and Winner.

Referred to: Judiciary.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SYSTEM OF COMPLETE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 22D.

"The North Carolina Clean Election Act.

"**§ 163-278.61. Definitions.**

When used in this Article:

(1) The term 'certified candidate' means a candidate running for office who chooses to participate in the North Carolina Clean Election Act and who is certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(2) The term 'Commission' means the North Carolina Commission on Election Practices, as established under G.S. 163-278.65.

(3) The terms 'contested primary election' and 'contested general election' mean elections in which there are more candidates than the number to be elected.

(4) The terms 'contribution' and 'expenditure' have the same meaning as defined in G.S. 163-278.6.

(5) The term 'election cycle' comprises the primary, runoff primary, and general election for election to the same term of the same office.

(6) The term 'Fund' means the North Carolina Clean Election Fund established in G.S. 163-278.63.

(7) The term 'nonparticipating candidate' means a candidate running for Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative who does not choose to participate in the North Carolina Clean Election Act and who is not seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(8) The term 'office', as used in this Article, means Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative.

(9) The term 'participating candidate' means a candidate who is running for office who is seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(10) The term 'qualifying contribution' means a donation of five dollars ($5.00) in the form of a check or money order payable to the Clean Election Fund in support of a candidate that is:

a. Made by any registered voter who is eligible to vote for the office which the candidate is seeking;

b. Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the candidate; and

c. Acknowledged by a written receipt that identifies the name, address, occupation, and place of employment of the donor on forms provided by the Commission.

(11) The term 'qualifying period' means:

a. For participating candidates for Governor, Lieutenant Governor, and other offices in the Council of State, the period beginning November 1 immediately preceding the election year and ending at noon on the third Monday in February of the election year.

b. For participating candidates for State Senator and State Representative, the period beginning January 1 of the election year and ending at noon on the first Monday in February of the election year.

(12) The term 'seed money contribution' means a contribution of no more than one hundred dollars ($100.00) made to a candidate by an individual but not a political committee, including contributions from the candidate and that candidate's spouse, parents, brothers, and sisters. A candidate may collect and spend seed money contributions throughout the qualifying period and during the 30

days immediately preceding the qualifying period. Seed money contributions are for the primary purpose of enabling participating candidates to collect qualifying contributions and shall be reported according to procedures developed by the Commission in the same method as qualifying contributions under subdivision (10) of this section. A candidate may not collect seed money contributions after certification as a Clean Election Act candidate. Candidates may not spend seed money after certification for campaign purposes, and may not spend seed money for any purpose after certification and before the general election of the election cycle for which they were certified, but after the election cycle may spend unspent seed money for noncampaign purposes.

"**§ 163-278.62. Purpose and establishment of North Carolina Clean Election Act.**

The purpose of this Article is to ensure the vitality of democratic elections in North Carolina, to the end that any citizen of this State, regardless of personal wealth or income, can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the First Amendment rights of candidates from being financially overwhelmed by the expenditures of their opponents or by independent expenditures. Accordingly, this Article establishes the North Carolina Clean Election Fund as an alternative campaign finance option available to candidates running for office. This Article is available to candidates for elections to be held in 2000 and thereafter. The Commission shall administer this Article and the North Carolina Clean Election Fund. Candidates participating in this Article must also comply with all other applicable election and campaign laws and rules.

"**§ 163-278.63. North Carolina Clean Election Fund established; sources of funding.**

(a) Establishment of Fund. -- The North Carolina Clean Election Act is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Commission related to this Article. The Fund is a special, dedicated, nonlapsing fund. Any interest generated by the Fund is credited to the Fund. The Commission shall administer the Fund.

(b) Sources of Funding. -- Money received from the following sources must be deposited in the Fund:

(1) The qualifying contributions required of Clean Election Act candidates under G.S. 163-278.64, once submitted to the Commission;

(2) Other unspent Clean Election Act revenues distributed to any Clean Election Act candidate who does not remain a candidate until the primary or general election for which they were distributed, or such revenues that remain unspent by a candidate following the date of the primary election or general election for which they were distributed;

(3) Any money transferred to the Clean Election Fund from the North Carolina Candidates Financing Fund;

(4) Contributions made to the Clean Election Fund by individual taxpayers pursuant to G.S. 105-269.6;

(5) Voluntary donations made directly to the Clean Election Fund; and

(6) General Fund monies appropriated for the use of the Clean Election Fund by the General Assembly pursuant to subsection (c) of this section.

(c) Determination of Fund Amount. -- By April 1, 1999, and every two years thereafter, the Commission shall prepare and provide to the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the North Carolina Clean Election Act. In its report, the Commission shall set out the funds received to date, the expected needs of the Fund during the next election cycle, and the amount of the appropriation from the General Assembly that will be needed for the biennium. The General Assembly shall include in its appropriations from the General Fund that year at least the amount that the Commission states in its report will be needed. In addition, the General Assembly shall reserve for the first fiscal year of the biennium at least fifteen percent (15%) of the amount of funds the Commission states in its report that it will need during the biennium, to be used by the Commission to cover any disbursement under G.S. 163-278.64 in excess of the amount of its direct appropriation.

"**§ 163-278.64. Terms of participation.**

(a) Declaration of Intent. -- Any individual choosing to participate in the North Carolina Clean Election Act shall first file with the Commission a declaration of intent to participate in the Act as a candidate for a stated office. The declaration of intent shall be filed with the Commission prior to or during the qualifying period, except as provided under subsection (k) of this section, according to forms and procedures developed by the Commission. A candidate choosing to participate in the Clean Election Act must submit a declaration of intent prior to collecting any qualifying contributions under this Article.

A candidate who files a declaration of intent shall swear or affirm that the candidate has complied with and will continue to comply with Clean Election Act contribution and expenditure limits and will comply with all other requirements set forth in this Article, or promulgated by the Commission.

(b) Restrictions on Contributions and Expenditures for Participating Candidates. -- After becoming a participating candidate as defined by G.S. 163-278.61(6) and prior to certification, participating candidates shall not accept contributions, except for seed money contributions or qualifying contributions. A participating candidate shall limit expenditures and seed money contributions to the following amounts:

(1) For a candidate for Governor, two hundred thousand dollars ($200,000).

(2) For a candidate for Lieutenant Governor or other office in the Council of State, one hundred thousand dollars ($100,000).

(3) For a candidate for State Senator, six thousand dollars ($6,000).

(4) For a candidate for State Representative, four thousand dollars ($4,000).

(c) Qualifying Contributions. -- Participating candidates must obtain qualifying contributions as follows:

(1) For a candidate for Governor, at least 6,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(2) For a candidate for Lieutenant Governor or other office in the Council of State, at least 3,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(3) For a candidate for State Senator, at least 300 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(4) For a candidate for State Representative, at least 200 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(d) Filing With the Commission. -- All participating candidates shall file qualifying contributions with the Commission during the qualifying period according to procedures developed by the Commission, except as provided under subsection (k) of this section.

(e) Certification of Clean Election Act Candidates. -- Upon receipt of a final submittal of qualifying contributions by a participating candidate, the Commission shall determine whether or not the candidate has:

(1) Signed and filed a declaration of intent to participate in this Article;

(2) Submitted the appropriate number of qualifying contributions;

(3) Qualified as a candidate under G.S. 163-106, 163-98, 163-122, 163-123, or 163-114;

(4) Complied with seed money contributions or expenditure restrictions; and

(5) Otherwise met the requirements for participation in this Article.

The Commission shall certify candidates complying with the requirements of this section as Clean Election Act candidates as soon as possible and no later than three days after final submittal of qualifying contributions.

Certified candidates shall comply with all requirements of this Article after certification and throughout the primary election and general election periods. Failure to do so is a violation of this Article.

(f) Restrictions on Contributions and Expenditures for Certified Candidates. -- After certification, a candidate shall limit campaign expenditures and debts to the revenues distributed to the candidate from the Fund and may not accept any contributions unless specifically authorized by the Commission, provided that a

candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of a candidate's public financing. All revenues distributed to certified candidates must be used for campaign-related purposes. The Commission shall publish guidelines outlining permissible campaign-related expenditures. A candidate shall return to the Fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before a primary or election for which the Fund money was distributed. A candidate shall return to the Fund any amount that was unspent and uncommitted after the date of the primary election or general election for which the Fund money was distributed.

(g) Timing of Fund Distribution. -- The Commission shall distribute to certified candidates revenues from the Fund in amounts determined under subsection (h) of this section in the following manner:

(1) Within three days after certification, for candidates certified before the first Monday in February of the election year, revenues from the Fund as if the candidates are in an uncontested primary election.

(2) Within three days after the first Monday in February of the election year, for primary election certified candidates, revenues from the Fund according to whether the candidate is in a contested or uncontested primary election, reduced by any amounts previously distributed under subdivision (1) of this subsection.

(3) Within the earlier of the following: within three days after the primary election, or within three days after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of the first opposition candidate, for general election certified candidates, revenues from the Fund according to whether the candidate is in a contested general election. No funds are distributed for uncontested general elections.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the Fund.

(h) Amount of Fund Distribution. -- By March 1, 1999, and no less frequently than every two or four years thereafter, as appropriate, the Commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows:

(1) Contested Primary Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding two primary elections for that office, provided that each of the following shall be considered a separate office for purposes of calculating the average:

a. Governor.

b. Lieutenant Governor and other offices in the Council of State shall be considered together as one separate office.

c. All State Senator seats, except that the amount for a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district.

d. All State Representative seats, except that the amount for a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district, and the amount for a candidate in a three-seat district shall be triple the amount for a candidate in a single-seat district.

(2) Uncontested Primary Elections. -- The amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races, or for contested races if the amount is lower, for the immediately preceding two primary elections for that office as defined in subdivision (1) of this subsection.

(3) Contested General Elections. -- The amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races each for the immediately preceding two general elections for that office as defined in subdivision (1) of this subsection.

(4) Uncontested General Elections. -- No revenues shall be distributed for uncontested general elections.

If the immediately preceding two election cycles do not contain sufficient electoral data, the Commission shall use information from the most recent applicable elections.

(i) Matching Funds. -- When any campaign, finance, or election report or group of reports show that the sum of a candidate's expenditures or obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate or in opposition to an opposing Clean Election Act candidate, exceeds the distribution amount under subsection (h) of this section, the Commission shall issue immediately to any opposing Clean Election Act candidate an additional amount equivalent to the reported excess. Any estimate reported pursuant to subsection (m) of this section shall be treated as an expenditure for purposes of release of matching funds under this subsection. Matching funds are limited to two times the amount originally distributed under subdivision (1), (2), or (3) of subsection (h) whichever is applicable.

(j) Unaffiliated Candidates. -- Unaffiliated candidates certified pursuant to G.S. 163-122 before 12:00 noon on the first Monday in February of the election year shall be eligible for revenues from the Fund in the same amounts and at the same time as uncontested primary election candidates and general election candidates as specified in subsections (g) and (h) of this section. For unaffiliated candidates not certified by 12:00 noon on the first Monday in February, the deadline for filing qualifying contributions is 12:00 noon on the last Friday in June of the election year. Unaffiliated candidates certified after noon on the first Friday in February shall be

eligible for revenues from the Fund in the same amounts as general election candidates, as specified in subsections (g) and (h).

(k) Other Procedures. -- For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Commission shall establish by rule procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues.

(l) Reporting by Participating and Certified Candidates. -- Notwithstanding other provisions of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, and related activities to the Commission according to procedures developed by the Commission. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues form the Fund remaining unspent shall return all revenues to the Commission. In developing these procedures, the Commission shall utilize existing campaign reporting procedures wherever practicable. The Commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

(m) Reporting by NonCertified Candidates. -- Any noncertified candidate who has as an opponent a certified candidate shall report to the Commission 20 days before any election an estimate of the amount that the noncertified candidate intends to spend. Any individual or political committee that intends to make expenditures to influence an election containing a certified candidate shall report to the Commission 20 days before the day of the election the amount that individual or political committee intends to spend to influence the election. Reports required by this subsection shall be made according to procedures which shall be developed by the Commission.

(n) Appeals. -- The procedure for challenging a certification decision by the Commission is as follows:

(1) A person aggrieved by a certification decision may appeal to the full Commission within three days of the certification decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five days after an appeal is properly made, and after due notice is given to the parties, the Commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the Commission's decision was improper. The Commission shall rule on the appeal within three days after the completion of the hearing.

(3) The challenger or a candidate may appeal the decision of the Commission by commencing an action in superior court.

(4) Candidates whose certification by the Commission as a Clean Election Act candidate is revoked on appeal shall return to the Commission any unspent revenues distributed by the Fund. If the Commission or court finds that an appeal was made frivolously or to result in delay or hardship, the Commission or court may

sanction the moving party by requiring the party to pay costs of the Commission, court, and opposing parties, if any.

"**§ 163-278.65. The Commission on Election Practices.**

(a) Establishment of the Commission. -- There is established the North Carolina Commission on Election Practices.

(b) The Commission shall consist of five members to be appointed as follows:

(1) By March 31, 1998, and as needed thereafter, the Governor, with the advice of the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall establish and publish a nomination period for members of the public, groups, and organizations to nominate qualified individuals to the Governor for appointment to the Commission.

(2) The Governor shall appoint the members of the Commission, taking into consideration nominations made during the nomination period, subject to confirmation by the General Assembly by joint resolution. No more than two Commission members shall be affiliated with the same political party. No elected official or candidate for elective office shall be eligible to be a member of the Commission. The Commission members shall be appointed and confirmed by October 1, 1998.

(3) Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot under the supervision of the Secretary of State. Thereafter, appointees are appointed to serve four-year terms. A person may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1.

(4) One of the Commission members shall be elected by the members as chair.

(5) A vacancy during an unexpired term must be filled as provided in this subsection, but only for the unexpired portion of the term.

"**§ 163-278.66. Commission to adopt rules.**

The Commission shall adopt rules to ensure effective administration of this Article. Such rules shall include, but not be limited to, procedures for obtaining qualifying contributions, certification as a Clean Election Act candidate, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with the Clean Election Act.

"**§ 163-278.67. Violations.**

(a) Civil Penalty. -- In addition to any other penalties that may be applicable, any person who violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the

Fund all amounts distributed to the candidate from the Fund. If the Commission makes a determination that a violation of this Article has occurred, the Commission shall impose a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the Fund. In determining whether or not a candidate is in violation of the expenditure limits of this Article, the Commission may consider as a mitigating factor any circumstances out of the person's control.

(b) Class I Felony. -- Any person who willfully or knowingly violates this Article or rules of the Commission or knowingly makes a false statement in any report required by this Article is guilty of a Class I felony and, if certified as a Clean Election Act candidate, must return to the Fund all amounts distributed to the candidate."

Section 2. Article 22C of Chapter 163 of the General Statutes is repealed.

Section 3. (a) G.S. 105-269.6 reads as rewritten:

"**§ 105-269.6. Contribution of individual income tax refund to ~~Candidates Financing Fund.~~ the North Carolina Clean Election Fund.**

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute all or part of the refund to the ~~North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes.~~ North Carolina Clean Election Fund created in Article 22D of Chapter 163 of the General Statutes. The Secretary ~~of Revenue~~ shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary ~~of Revenue~~ shall, on a quarterly basis, transmit the contributions made pursuant to this section to the State Treasurer for credit to the ~~North Carolina Candidates Financing Fund.~~ North Carolina Clean Election Fund. Any interest earned on funds so credited shall be credited to the Fund."

(b) The Secretary of Revenue shall transfer to the North Carolina Clean Election Fund any funds contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its amendment by this section but not yet transferred to that Fund.

Section 4. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

Section 5. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 6. This act is effective when it becomes law. Section 4 of this act applies to any contribution, primary, or election occurring on or after the date it becomes law.

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — Name of Committee

**April 8, 1997** — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| A. Holtzman | N.C. State University - Dept of Political Science |
| Clara Dicks | Citizen N - N.C. Alliance - Grass |
| Carolyn King | Concerned Citizen Al. for Democracy |
| Judy Harcourt | Wake Co Bd of Elections |
| Kathryn Queen | Wake Co. Bd. Of Elections |
| Ann Clegg | Citizens for Responsible Government Concerned Citizen |
| John Boyd | Common Cause, Citizens for Responsible Govt PATH |
| Pearl Burlin | NC Alliance for Democracy NC Common Cause, CFRG, Guilford Co. |
| Kathryne Thompson | League of Women Voters Dare County |
| William Shaw | NC Alliance for Democracy |
| Ricka Samulski | League of Women Voters Chapel Hill |
| Mary Leuba | League of Women Voters - Wake County |
| Jane Cottrell | League of Women Voters - Pitt Co. |
| Terry Shank | League of Women Voters of Pitt Co. |
| Lacking Hodges | League of Women Voters of Moore Co. |
| Gwen Greigwold | LWV - Chapel Hill / Carrboro |
| Lynda Buck | LWV of Moore Co. |
| Winifred Berg | LWV - Chapel Hill / Carrboro |
| Nancy Johnson | LWV Chapel Hill / Carrboro |
| Marie in Dodd | League of Women Voters NC |
| Barbara Farr | League of Women Voters of Moore Co, NC |
| Mary Walker | LWV of Moore County |
| Chris Carfora | LWV of Moore County, NC |
| Ruth Zalph | Alliance For Democracy - Raleigh Friends Mtg. |
| Diana Phillips | League of Women Voters Chapel Hill |
| Ann Von Kleinsmid | ARST, Silver City |

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 8, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| CHRISTOPHER M. CARSON | N.C. ALLIANCE FOR DEMOCRACY |
| Doreen M. Hiscott | N.C. Alliance for Democracy |
| Steve Waters | NC. Alliance for Democracy |
| MARY ANN GLASGOW MCDOWELL | COMM. U. C. C. / N. C. ALLIANCE |
| Michael Rulison | N.C. Consumers Council, Inc. |
| JEROME KOHL | Rel. U.U. Fellowship - 807 Gardner St. Raleigh 27607 |
| Megan Carney | BSW Student - Meredith College |
| Alice Garland | Electricities |
| Paula Wolf | Covenant with NC's Children |
| Barbara B. Rogers | League of Women Voters - Chapel Hill/Carrboro |
| Betty Harber | LWV Wake Cont. 401 Oberlin Rd Ste 14 Raleigh 27605 |
| Katherine Colwell | League of Women Voters of N.C. 3900 Barrett Dr. Raleigh |
| Stan Goff | Democracy South |
| Nancy Salmon | LWV of Chapel Hill/Carrboro |
| Melissa | Lt Gov Office |
| J. Gerhart | NC Citizen Action |
| Cy King | N.C. Council of Churches |
| Paul Bredenberg | " " " " |
| J.R. Letty | NC Council of " |
| Anne Lankowski | Reform Party |
| Brad Kelly | Reform Party |
| Barbara T. Cain | NC Alliance for Democracy |
| Betsy R Towe | " " " " |
| Edmund Klemmer | United Nations Assn. |
| BOB CAIN | RALEIGH PEACE ACTION |
| Charlie West | Common Cause / Alliance for Dem. |

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 8, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Worrell Jean Nesbitt | Common Cause & HELV |
| Jennifer Muller | Fitzgerald NC |
| Bill Harper | self 4625 old cherry Pt Rd. New Bern N.C. |
| Martha Fire | Wake Housing & Homeless Coalition |
| Nancy Mueller | League of Women Voters of Chapel Hill / Carrboro |
| Hank G. Thatcher | N-R-F NEW BERN-N/C. |
| Liz York | Common Cause / NC |
| Anne Marie Delaney | |
| GARY KENTON | Citizens for Responsible Government 1505 Fairmont St., Greensboro, NC 27403 |
| BILL LONG | PEOPLES ALLIANCE 623 WINDSONG LN DURHAM NC |
| Deborah Ross | ACLU, Raleigh |
| Bill Krock | Greensboro, NC |
| Mel | |
| Walker Murphy | NC ALLIANCE FOR DEMOCRACY |
| Pat | NC Alliance for Democracy |
| Richard Prather | NCOSH/NCAD |
| Larry Grossman | Concept to Reality, Inc., 2000 Upland Ct., Raleigh, NC 27615 |
| Stephen Hair | Center Fayette |
| Carrie H. Bolton | Chatham Co. Political Reform Group 2726 Alston Chapel Rd. Pittsboro, NC 27312 |
| Richard Fogar | N.C. Fair Share |
| Richard E. Way | Common Cause |
| Beverly M. Brown | Common Cause |
| Myra Thompson | Common Cause - Alliance |
| Samuel H. Brower | Common Cause - NC - |
| Colleen McCleary | Common Cause N/C. |
| Leo Brede | N.C. All. for Dem. |

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — APRIL 8, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Louise Birdsall | N.C. Hunger Network 600 Glenwood Ave Raleigh 27605 |
| Kermit Hill | Gaston Gazette |
| Danielle Dadante | WNCN - NBC-17 |
| Tom Bellamy | U of L, U.C. |
| Gibson Gray | Common Cause/NC 3630 Kate Drive Lumberton, N.C. 28358 |
| James W. Rayford | Reform Party 6668 Creedmoor Rd, Raleigh, NC 27613 |
| Pat Walsh | NC Fair Share 530 N. Person St. Raleigh NC 27605 |
| Barbara Earls | 9257 Chapel Hill Rd., Cary NC 27513 |
| Marian Dodd | League of Women Voters NC 3900 Barrett Dr. S. 311, Raleigh NC 27609 |
| Lynice Williams | N.C. Fair Share 530 N. Person Street Raleigh NC. 27604 |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 10, 1997

The Senate Judiciary Committee met on Thursday, April 10, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Wellons to explain **Senate Bill 250** - AN ACT TO CLARIFY PERFECTION OF A SECURITY INTEREST IN AFTER-ACQUIRED REAL PROPERTY.

Senator Wellons moved to adopt a Proposed Committee Substitute for Senate Bill 250 for discussion. The motion carried by voice vote.

Steve Rhinehart, with the N. C. Bar Association - Real Property Section, was recognized to answer questions from the Committee.

Senator Lucas moved to amend the Proposed Committee Substitute on Page 1, Line 13 by deleting the word "Grantor" and substituting the words "Grantor and the deed to the grantor of the after-acquired property is registered". The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Wellons was recognized to explain **Senate Bill 251** - AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS AND COVENANTS BY A LANDOWNER.

Senator Soles moved to adopt a Proposed Committee Substitute for Senate Bill 251 for discussion. The motion carried by voice vote.

Steve Rhinehart was recognized to answer questions from the Committee.

Senator Kerr moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Winner was recognized to explain **Senate Bill 285** - AN ACT TO MAKE IT A FELONY TO CONCEAL MERCHANDISE BY USING A LEAD-LINED OR ALUMINUM-LINED BAG OR OTHER DEVICE THAT WILL PREVENT THE ACTIVATION OF AN ANTI-SHOPLIFTING CONTROL DEVICE.

Fran Preston, with the N. C. Retail Merchants Association, was recognized to answer questions on the bill.

Senator Winner moved to amend the bill on Page 1, Lines 9 and 10 (see attached Amendment). The motion carried by voice vote.

Senator Rand moved to give the bill a favorable report as amended, roll it into a Committee Substitute and re-refer it to Appropriations. The motion carried by voice vote.

Senator Hoyle was recognized to explain **Senate Bill 117** - AN ACT TO MODIFY THE DEFINITIONS OF "OUT-OF-STATE DRIVING CONVICTION" AND "MOPED" USED IN THE MOTOR VEHICLE LAWS.

Tony Spence, with the Division of Motor Vehicles, were recognized to answer questions from the Committee.

After discussion of the bill by the Committee, Senator Soles moved to remove the bill from the calendar in order to work out the differences. The motion carried by voice vote.

Senator Rand was recognized to explain **Senate Bill 320** - AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.

Senator Rand moved to amend the bill on Page 1, Line 20, Page 2, Line 7 by inserting between the words "any" and "organization" the "individual," j and....., and on Page 2, Line 29 by rewriting the line to read: "`58-50-25. Nurses' services.". The motion carried by voice vote.

Senator Rand moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# SENATE JUDICIARY COMMITTEE
# APRIL 10, 1997

## AGENDA

| | | |
|---|---|---|
| SB 117 | Modify Two DMV Definitions | Gulley |
| SB 240 | Limit Fundraising in Session | Gulley |
| SB 250 | Clarify Perfection-Security Interest | Wellons |
| SB 251 | Creation of Easements by Landowner | Wellons |
| SB 285 | Amend Shoplifting Law | Winner |
| SB 309 | Child Fatality Task Force Records | Martin |
| SB 320 | Nurses' Training | Rand |
| SB 360 | Boat Number Fees | Albertson |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 250

Short Title: Clarify Perfection-Secur. Interest. (Public)

Sponsors: Senators Wellons; Blust, Dalton, Gulley, Hartsell, and Kerr.

Referred to: Judiciary.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PERFECTION OF A SECURITY INTEREST IN AFTER-ACQUIRED REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20.5(c) reads as rewritten:

"(c) An after-acquired property clause is effective to pass after-acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been registered or reregistered at or subsequent to the time such after-acquired property is acquired by such grantor."

Section 2. This act is effective when it becomes law and applies retroactively except that it shall not apply to litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

**North Carolina General Assembly**
**Legislative Services Office**

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

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Terrence D. Sullivan, Director
Research Division
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(919) 733-2578

April 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 250 - CLARIFY PERFECTION OF SECURITY INTEREST IN AFTER ACQUIRED PROPERTY -** Senator Wellons

Senate Bill 250 would clarify that a security interest in after acquired real property can be created even if the instrument granting an interest in after acquired property is registered subsequent to the registration of property in which the interest is being acquired. This bill is a recommendation of the Real Property Section of the North Carolina Bar Association.

The bill amends G.S. 47-20.5(c) by permitting the original recording, in addition to rerecording, of the instrument containing an "after acquired property" clause in order to effect a security interest in property acquired after the execution of the granting document, but before its recordation. Current law provides that such a clause is valid as against lien creditor and purchasers for value after the instrument granting the after acquired interest is reregistered. The statute currently makes no provision for circumstances where the "after acquired property"' is acquired before the security instrument is recorded or registered. The language in this change is consistent with subsection (g) of this same section which currently refers to the registering or reregistering of the security instrument. A copy of G.S. 47-20.5 which includes the definition of after acquired property is attached.

The bill will become effective when it becomes law and will apply to instruments registered before, on, and after the effective date, but will not apply to pending litigation or instruments involved in pending litigation.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§47-20.5. Real property; effectiveness of after-acquired property clause.**

(a) As used in this section, "after-acquired property clause" means any provision or provisions in an instrument which create a security interest in real property acquired by the grantor of the instrument subsequent to its execution.

(b) As used in this section, "after-acquired property," and "property subsequently acquired" mean any real property which the grantor of a security instrument containing an after-acquired property clause acquires subsequent to the execution of such instrument, and in which the terms of the after-acquired property clause would create a security interest.

(c) An after-acquired property clause is effective to pass after- acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after- acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been reregistered at or subsequent to the time such after-acquired property is acquired by such grantor.

(d) In lieu of reregistering the instrument containing the after- acquired property clause as specified in subsection (c), such instrument may be made effective to pass title to after-acquired property as against lien creditors and purchasers for a valuable consideration from the grantor of the instrument by registering a notice of extension as specified in subsection (e) at or subsequent to the time of acquisition of the after-acquired property by the grantor.

(e) The notice of extension shall

(1) Show that effective registration of the after-acquired property clause is extended,

(2) Include the names of the parties to the instrument containing the after-acquired property clause,

(3) Refer to the book and page where the instrument containing the after-acquired property clause is registered, and

(4) Be signed by the grantee or the person secured by the instrument containing the after-acquired property clause or his successor in interest.

(f) The register of deeds shall index the notice of extension in the same manner as the instrument containing the after-acquired property clause.

(g) Except as provided in subsection (h) of this section, no instrument which has been heretofore executed or registered and which contains an after-acquired property clause shall be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of such instrument unless and until such instrument or a notice of extension thereof has been registered or reregistered as herein provided.

(h) Notwithstanding the provisions of this section with respect to registration, reregistration and registration of notice of extension, an after-acquired property clause in an instrument which creates a security interest made by a public utility as defined in G.S. 62-3(23) or a natural gas company as defined in section 2(6) of the Natural Gas Act, 15 U.S.C.A. 717a(6), or by an electric or telephone membership corporation incorporated or domesticated in North Carolina shall be effective to pass after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument from the time of original registration of such instrument. (1967, c. 861, s. 1; 1969, c. 813, ss. 1-3.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S250-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 250
THIS IS A DRAFT 9-APR-97 21:43:43
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Perfection-Secur. Interest. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PERFECTION OF A SECURITY INTEREST IN AFTER-ACQUIRED REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20.5(c) reads as rewritten:

"(c) An after-acquired property clause is effective to pass after-acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been registered or reregistered at or subsequent to the time such after-acquired property is acquired by such grantor."

Section 2. This act is effective when it becomes law and applies to instruments registered before, on, or after the effective date except that it shall not apply to litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 250 PCS Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

1 moves to amend the bill on page 1, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "GRANTOR." AND
4 SUBSTITUTING THE WORDS "GRANTOR AND THE
5 DEED TO THE GRANTOR OF THE AFTER ACQUIRED
6 PROPERTY IS REGISTERED."
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SIGNED Jeanne Lucas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

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April 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 251 - CREATION OF EASEMENTS BY LANDOWNER -** Senator Wellons

Senate Bill 251 will permit landowners to record easements, restrictions and covenants over their own property even when the property owners own the entire interest in all the property effected. This bill is a recommendation of the Real Property Section of the North Carolina Bar Association.

This bill is an attempt to overturn a ruling by the North Carolina Court of Appeals in Tower Development Partners v. Zell, 120 NC App 136 (1995) which reaffirmed the common law of North Carolina that a person cannot have an easement (or presumably restrictions or covenants) on their own land under a doctrine of merger where the owner holds both the dominant and servient interest in the property. Prior to this case it had been presumed that the law in North Carolina was that property conveyed subject to prior recorded easements, restrictions, or covenants were subject to those covenants. This is the typical way that easements and restrictive covenants in subdivisions, townhouse and condominium developments, and planned unit developments are created in this state. The Tower decision put these types of arrangements and conveyances in doubt, resulting in considerable uncertain as to the state of title to a great amount of real property and the effectiveness of security interest held by lending institutions.

This bill would overturn the Tower decision and the common law and permit property owners to subject their real property to easements, restrictions, and covenants prior to conveying a part of their property to another person. This would allow these conditions to run with the land and apply to all subsequent owners, subjecting them to these recorded burdens and giving them the benefit of common restrictions. The bill affirms that the doctrine of merger would apply if the subjected property were recombined and the title to the affected tracts merged again into a common owner.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Because the owner of an undivided tract owns all the property that might be subject to these types of burdens, the owner would always have the right to change or remove any recorded easements, restrictions, or covenants before any of the land subject to these matters is conveyed to another person. Also because all such easements, restriction, or covenants must be recorded in the Register of Deeds office prior to becoming effective, all subsequent owners of the land will have record notice of these burdens and will buy the property such to these matters.

The bill becomes effective when it becomes law and applies to easements, restrictions, conditions or interests created before, on, or after the effective date but will not apply to pending litigation on the effective date, nor to instruments involved in pending litigation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 251

Short Title: Creation of Easements by Landowner. (Public)

Sponsors: Senators Wellons; Dalton and Hartsell.

Referred to: Judiciary.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS BY A LANDOWNER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.4. Creation of easements, restrictions, and conditions.**

(a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

(b) Subsection (a) of this section shall not affect the application of the Doctrine of Merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein."

Section 2. This act is effective when it becomes law and applies to all easements, restrictions, conditions, or interests created, granted, reserved, or declared on or before the effective date of this act but shall not apply to any litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S251-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 251
THIS IS A DRAFT 9-APR-97 21:13:07
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Creation of Easements by Landowner. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS BY A LANDOWNER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.4. Creation of easements, restrictions, and conditions.**

(a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

(b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein."

Section 2. This act is effective when it becomes law and applies to all easements, restrictions, conditions, or interests created, granted, reserved, or declared before, on, or after the effective date of this act but shall not apply to any litigation pending on the effective date or to any instrument

directly or indirectly involved in litigation pending on that date.

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April 10, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 285 - AMEND SHOPLIFTING LAW**
Senator Winner

Senate Bill 285 makes it a Class H felony to conceal merchandise by using a lead lined or aluminum-lined bag, clothing, or other similar device to prevent detection. Assuming prior record level I, the presumptive minimum sentence for a Class H felony is 5-6 months community, intermediate, or active punishment.

**Under current law**, G. S. 14-72.1(e) provides that punishment for concealment of merchandise is as follows:

- For a first conviction, the defendant may be guilty of a Class 3 misdemeanor.
- 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.
- 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.

A copy of the full-text of G.S. 14-72.1 is attached.

The bill becomes effective December 1, 1997 and applies to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 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

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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.)

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 285

Short Title: Amend Shoplifting Law. (Public)

Sponsors: Senator Winner.

Referred to: Judiciary.

March 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO CONCEAL MERCHANDISE BY USING A LEAD-LINED OR ALUMINUM-LINED BAG OR OTHER DEVICE THAT WILL PREVENT THE ACTIVATION OF AN ANTISHOPLIFTING CONTROL DEVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1 is amended by adding a new subsection to read:

"(d1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony."

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. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep. )
Sen. ) _____

1 moves to amend the bill on page _____ 1 _____, line _____ 7-10 _____

2 ( ) WHICH CHANGES THE TITLE

3 by _____

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5 _____

6 _____

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12 _____

13 _____

14 _____

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

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April 10, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 117 - MODIFY TWO DMV DEFINITIONS**
Senator Gulley

House Bill 117 modifies the definitions of "out-of-state driving conviction" and "moped" used in the motor vehicle laws, as recommended by the Joint Legislative Transportation Oversight Committee.

Section 1 of the bill changes the definition of "out-of-state conviction" for drivers license purposes to include a plea of no contest. This change makes an out-of-state conviction the same as an in-state conviction with respect to no contest pleas. Under current law, a plea of no contest is specifically included in the definition of an in-state conviction.

Section 2 deletes the requirement that a moped have pedals. Apparently some mopeds that are currently manufactured do not have pedals.

Section 1 of the bill would become effective November 1, 1997, and would apply to offenses committed on or after that date.; Section 2 of the bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 117

Short Title: Modify Two DMV Definitions. (Public)

Sponsors: Senators Gulley, Hoyle, Horton, Kerr, Martin of Pitt, and Rand.

Referred to: Judiciary.

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.

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April 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 320 - NURSES' TRAINING** - Senator Rand

Senate Bill 320 would allow a licensed nurse who has successfully completed a training program approved by the North Carolina Board of Nursing to conduct medical examinations and collect evidence from victims of rape and sexual offenses, and would allow these nurses to be paid directly for these services by insurance companies and the Victims Assistance Program.

Section 1 of the bill authorizes the education and training of licensed nurses in skills, procedures and techniques for conducting medical examinations of and collecting evidence from victims of rape and sexual offenses in accordance with standards established by the Board. Entities desiring to establish an approved program must apply to the Board and meet the standards established by the Board.

Section 2 provides that a licensed nurse who has successfully completed an approved training course established under section 1 of the bill is not consider to be practicing nursing without a license when conducting medical examinations or procedures for collecting evidence from victims of rape or sexual offenses.

Section 3 amends the insurance law to permit a licensed nurse who has been trained in accordance with Section 1 of the bill to be paid directly by the insurance company for performing exams and procedures as provided for under this bill.

Section 4 amends the Victims of Rape and Sexual Offense Assistance Act to permit direct payment to nurses from the Victims Assistance Fund for services performed as permitted by this bill.

The bill is effective when it becomes law.

S320-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§90-171.20. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) "Board" means the North Carolina Board of Nursing.

(2) "Health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this Article, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider.

(3) "License" means a permit issued by the Board to practice nursing as a registered nurse or as a licensed practical nurse, including a renewal thereof.

(4) "Nursing" is a dynamic discipline which includes the caring, counseling, teaching, referring and implementing of prescribed treatment in the prevention and management of illness, injury, disability or the achievement of a dignified death. It is ministering to; assisting; and sustained, vigilant, and continuous care of those acutely or chronically ill; supervising patients during convalescence and rehabilitation; the supportive and restorative care given to maintain the optimum health level of individuals and communities; the supervision, teaching, and evaluation of those who perform or are preparing to perform these functions; and the administration of nursing programs and nursing services.

(5) "Nursing program" means any educational program in North Carolina offering to prepare persons to meet the educational requirements for licensure under this Article.

(6) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.

(7) The "practice of nursing by a registered nurse" consists of the following nine components:

a. Assessing the patient's physical and mental health, including the patient's reaction to illnesses and treatment regimens;

b. Recording and reporting the results of the nursing assessment;

c. Planning, initiating, delivering, and evaluating appropriate nursing acts;

d. Teaching, delegating to or supervising other personnel in implementing the treatment regimen;

e. Collaborating with other health care providers in determining the appropriate health care for a patient but, subject to the provisions of G.S. 90-18.2, not prescribing a medical treatment regimen or making a medical diagnosis, except under supervision of a licensed physician;

f. Implementing the treatment and pharmaceutical regimen prescribed by any person authorized by State law to prescribe such a regimen;

g. Providing teaching and counseling about the patient's health care;

h. Reporting and recording the plan for care, nursing care given, and the patient's response to that care; and

i. Supervising, teaching, and evaluating those who perform or are preparing to perform nursing functions and administering nursing programs and nursing services.

(8) The "practice of nursing by a licensed practical nurse" consists of the following five components:

a. Participating in assessing the patient's physical and mental health including the patient's reaction to illnesses and treatment regimens;

b. Recording and reporting the results of the nursing assessment;

c. Participating in implementing the health care plan developed by the registered nurse and/or prescribed by any person authorized by State law

to prescribe such a plan, by performing tasks delegated by and performed under the supervision or under orders or directions of a registered nurse, physician licensed to practice medicine, dentist, or other person authorized by State law to provide such supervision;

d. Reinforcing the teaching and counseling of a registered nurse, physician licensed to practice medicine in North Carolina, or dentist; and

e. Reporting and recording the nursing care rendered and the patient's response to that care. (1981, c. 360, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 320

Short Title: Nurses' Training. (Public)

Sponsors: Senators Rand; Ballance, Cochrane, Cooper, Forrester, Gulley, Hartsell, Kinnaird, Lee, Miller, Odom, Perdue, Reeves, Rucho, Warren, and Wellons.

Referred to: Judiciary.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM THE VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.38 reads as rewritten:

"**§ 90-171.38. Standards for nursing programs.**

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board.

(b) Any organization, association, corporation, or institution may establish a program for the purpose of training or educating any nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to

conduct medical examinations of, and the medical procedures to collect evidence from, the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. The Board shall establish, revise, or repeal standards for any such program. Any organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

Section 2. G.S. 90-171.44 reads as rewritten:

"**§ 90-171.44. Prohibited acts.**

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

(1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet ~~therein;~~ therein.

(2) Practice nursing under cover of any fraudulently obtained ~~license;~~ license.

(3) Practice nursing without a ~~license;~~ license. This subdivision shall not be construed to prohibit any licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations of, or procedures to collect evidence from, the victims of offenses described in that subsection.

(4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the ~~Board; or~~ Board.

(5) Employ unlicensed persons to practice nursing."

Section 3. G.S. 58-50-25 reads as rewritten:

"**§ 58-50-25. (Effective until October 1, 1998) Nurses' services.**

(a) No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

(b) Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted. A licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) may receive direct payment for conducting medical examinations or medical procedures described in that subsection if the payment is in lieu of any payment which would have otherwise been permitted."

Section 4. G.S. 143B-480.2 reads as rewritten:

"**§ 143B-480.2. Victim assistance.**

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars ($500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) With the exception of assistance authorized under subsection (e) of this section, ~~Assistance~~ assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(e) In lieu of any payment which may otherwise have been made under subsection (b), assistance for expenses authorized under this section may be paid directly to any licensed nurse who has successfully completed a program approved under G.S. 90-171.38(b). The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

Section 5. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
**Senate Bill 320**

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

S320-ARU-001



Date 4-10 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator

1 moves to amend the bill on page 2, line 29,
2 by rewriting the line to read:
3 "'§ 58-50-25. Nurses' services.".

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

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

moves to amend the bill on page 1, line 20 & PAGE 2, LINE 7

( ) WHICH CHANGES THE TITLE

by INSERTING BETWEEN THE WORDS "ANY" AND "ORGANIZATION" THE "INDIVIDUAL," ; AND

PAGE 2, LINE 9

BY

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 10, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Tony Spence | DOT/DMV |
| Whitney Obrig | DMHDDSAS |
| Susan E. Robinson | DMHDDSAS |
| R. Paul Williams | NCHRA |
| Thomas V. Bennett | NCCFTF |
| Esther T. High | NCDSS |
| Rob Schofield | NCJCDC |
| Larry Heckner | Household Finance Group |
| Guy Rowing | Hayes Barton Stores |
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**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, April 14, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **250** Clarify Perfection-Security Interest

| | |
|---|---|
| Draft Number: | PCS 1736 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

S.B. **251** Creation of Easements by Landowner

| | |
|---|---|
| Draft Number: | PCS 1737 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

S.B. **285** Amend Shoplifting Law

| | |
|---|---|
| Draft Number: | PCS 7716 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | Yes |

S.B. **320** Nurses' Training

| | |
|---|---|
| Draft Number: | PCS 1734 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 15, 1997

The Senate Judiciary Committee met on Tuesday, April 15, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Reeves to explain **Senate Bill 667** - AN ACT TO AMEND THE CRIMINAL OFFENSE OF STALKING.

Roslyn Savitt, with the Coalition Against Domestic Violence, was recognized to speak on the bill.

Senator Ballantine moved to amend the bill on Page 1, Lines 9 and 10. (See attached amendment.) After discussion, Senator Ballantine withdrew the amendment.

Senator Lucas moved to give the bill a favorable report. The motion carried by voice vote.

Senator Miller was recognized to explain **Senate Bill 627** - AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS.

Senator Miller moved to amend the bill on Page 1, Line 15. (See attached amendment.) The motion carried by voice vote.

Rob Scofield, with Legal Services, was recognized to speak on the bill.

Senator Allran moved to amend the bill on Page 1, Line 21. (See attached amendment.) The motion carried by voice vote.

Senator Gulley moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA

## SENATE JUDICIARY COMMITTEE
## APRIL 15, 1997

| | | |
|---|---|---|
| SB 240 | Limit Fundraising in Session | Gulley |
| SB 264 | Liability for Job References | Horton |
| SB 360 | Boat Number Fees | Albertson |
| SB 430 | Industrial Hygienists | Odom |
| SB 627 | Domestic Violence Changes | Miller |
| SB 628 | Domestic Violence Misdemeanor | Miller |
| SB 667 | Amend Stalking Law | Reeves |

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

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Thomas L. Covington, Director
Fiscal Research Division
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Terrence D. Sullivan, Director
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Raleigh, NC 27603-5925
(919) 733-2578

April 15, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 667 - AMEND STALKING LAW**
Senator Reeves

Senate Bill 667 would redefine the criminal offense of stalking and increase the penalty for the offense.

The anti-stalking law was passed by the General Assembly in 1992 and became effective October 1, 1992. It was intended to provide a criminal charge for harassment or other conduct that may not constitute a traditional crime such as assault, communicating threats, and trespass.

Under current law, the offense of stalking is committed when a person willfully, on more than one occasion, follows or is in another person's presence without legal purpose, with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury. Senate Bill 667 would eliminate provisions in the current law that require that the offender must have been given "reasonable warning or request to desist" and that the acts "constitute a pattern of conduct over a period of time evidencing a continuity of purpose."

Senate Bill 667 would also increase the penalty for the offense. It would raise stalking from a Class 2 to a Class 1 misdemeanor, which would allow a judge to impose an active sentence if an offender has at least 1 prior conviction. A Class 2 allows an active sentence only if the person has 5 or more prior convictions. The bill also provides that a person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a Class A1 misdemeanor (currently Class 1). A Class A1 misdemeanor gives the judge the full range of sentencing options at all levels. A copy of the misdemeanor sentencing chart is shown on the reverse side of this memorandum.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**Table 4**
**Misdemeanor Sentence Dispositions and Prison/Jail Term Ranges**
A = active punishment I = intermediate punishment C = community punishment

| Misdemeanor Class (Fine) | Level I: No Prior Convictions | Level II: 1 to 4 Prior Convictions | Level III: 5 or More Prior Convictions |
|---|---|---|---|
| Class A1 (fine discretionary) | C/I/A<br>1–60 days | C/I/A<br>1–75 days | C/I/A<br>1–150 days |
| Class 1 (fine discretionary) | C<br>1–45 days | C/I/A<br>1–45 days | C/I/A<br>1–120 days |
| Class 2 (maximum fine $1,000) | C<br>1–30 days | C/I<br>1–45 days | C/I/A<br>1–60 days |
| Class 3 (maximum fine $200) | C<br>1–10 days | C/I<br>1–15 days | C/I/A<br>1–20 days |

*Source*: G.S. 15A-1340.23(c).

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 667 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. ) BALLANTINE
)
Sen. )

1 moves to amend the bill on page 1, line 9 + 10 ~~8 THROUGH 10~~

2 ( ) WHICH CHANGES THE TITLE

3 by REWRITING THE LINES TO READ:

4 ~~" PURPOSE; PURPOSE AND WITH~~

5 " ~~(1) WITH~~ WITH THE INTENT ~~TO~~ TO:

6 (1) CAUSE EMOTIONAL DISTRESS; OR

7 (2) ~~PLACE~~ PLACE THAT PERSON IN REASONABLE

8 FEAR OF DEATH OR BODILY ~~INJURY;~~ INJURY. "

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 16, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **627** Domestic Violence Changes

| | |
|---|---|
| Draft Number: | PCS 1761 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 627

Short Title: Domestic Violence Changes. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1(b) reads as rewritten:

"(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;~~ Are related as parents and children, including parents 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 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. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 627

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

S627-ARU-001

Page 1 of __

Date 4-15- ,1997

Comm. Sub. []
Amends Title []

Senator

1 moves to amend the bill on page 1, line 15,
2 by deleting the word "parents" and substituting the word "others".

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 4-15-97

S. B. No. 627 Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) ALLRAN
Sen. )

1 moves to amend the bill on page 1, line ~~5~~ 21

2 ( ) WHICH CHANGES THE TITLE

3 by REWRITING THE LINE TO READ:

4 "(6) ARE IN A DATING RELATIONSHIP OR HAVE

5 BEEN IN A DATING RELATIONSHIP. FOR PURPOSES

6 OF THIS SUBDIVISION, A".

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SIGNED Allran

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**§ 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.

**§ 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 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.

**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

(1) Direct a party to refrain from such acts;
(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
(3) Require a party to provide a spouse and his or her children suitable alternate housing;
(4) Award temporary custody of minor children and establish temporary visitation rights;
(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;
(8) Provide for possession of personal property of the parties;
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other party,
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
c. Otherwise interfering with the other party;
(10) Award costs and attorney's fees to either party;
(11) Prohibit a party from purchasing a firearm for a time fixed in the order;
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order onto the Division of Criminal Information Network and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered.

**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. Said party may file and proceed with such motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the

victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

(c) Valid protective orders entered pursuant to this section shall be enforced by all North Carolina law-enforcement agencies without further order of the court.

(d) Valid protective orders entered by the courts of another state or Indian tribe shall be accorded full faith and credit by the courts of North Carolina and shall be enforced by the law-enforcement agencies of North Carolina.

**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:
   a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;
   b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
   c. That the defendant refrain from removing, damaging or injuring specifically identified property;
   d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

   The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section. (1979, c. 561, s. 4; 1989, c. 290, s. 2; 1995, c. 527, s. 3.)

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April 15, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 627 - DOMESTIC VIOLENCE CHANGES** - Senator Miller

Senate Bill 627 amends the definition of "familial relationship" under the domestic violence act to include current and former members of the household and persons dating or who have dated. The bill also clarifies the definition related to the relationship between children, parents, and grandparents under this law. Additionally the bill eliminates the criteria of whether the clerk of court is available before the magistrate may issue a domestic violence order.

Section 1 of the bill amends the "familiar relationship" definition involving the relationship between children, parents (including person acting in loco parentis) and grandparents, by clarifying that the relationship must be either between parent and child, or grandparent and grandchild. This provision says that this method for relief is not available as against a child under the age of 16. This section also expands the definition of "familial relationship" to include current or former household members, and persons involved or previously involved in a dating relationship. This section defines a "dating relationship" as one where the parties are romantically involved over a period of time and on a continuous basis. It specifically excludes casual acquaintances or ordinary fraternization between persons in a business or social context.

Section 2 deletes reference to the clerk of court in circumstances where a magistrate is authorized to hear motions for emergency relief ex parte (with only one party present) under the domestic violence statute. Current law requires that before a magistrate may act the clerk of court must not be available, district court not be in session, and a district court judge not be able to hear the motion for four hours or more. This section deletes reference to the clerk who is not otherwise authorized by law to conduct the hearing or enter orders in these circumstances.

The bill becomes effective December 1, 1997 and applies to offense committed on or after that date.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 15, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **667** Amend Stalking Law
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 15, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Roslyn Savelle | NC Coalition Against Dom. Violence |
| Rob Schofield | NCJCDC |
| Deborah Ross | ACLU |
| Joe McClees | IH |
| Mary Carol Lewis | IH |
| James ANDREWS | NC AFL-CIO |
| | AT&L |
| Brenda Summers | NC Equity |
| Amanda Digby | NCATL |
| Bill Alexander | PBA |
| | PBA. |
| John Madden | Sentencing Commission |
| ERIC ZOURT | " " |
| | Chief Deputy Comptroller, Durham |
| | CSC / Franklin Co |
| Tommy WORTH | Carolinas HealthCare System |
| KEN MAXWELL MD | DOCTOR OF THE DAY |
| Amy Jo Bain | Smith Anderson |
| Bethy Turner | GCA-GIA |
| Eileen Hennessy | Greensboro Chamber of Commerce |
| Natalie Haskins | Charlotte Chamber of Commerce |
| Sandra Long | Hospice of the Carolinas |
| Jane Updhurch | NCPTL |
| R. Paul Wilcox | NCHBA |
| Charlie Diehl | NC Outdoor Adv. Assoc. |
| Dale Mitchell | SCENIC NC |

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## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 15, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Jim Drennan | Institute of Gov't |
| Paula A. Wolf | Covenant with NC's Children |
| M Eades | Self-Help |
| [signature] | [signature] |
| FRANFRESON | NCRMP |
| Cam Cover | BPMHL |
| Dana Cope | Labor |
| Becky Brown | " |
| Rainey Sandy | " |

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 15, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| | |
| | |
| | |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 17, 1997

The Senate Judiciary Committee met on Thursday, April 17, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dalton to explain **Senate Bill 515** - AN ACT TO REQUIRE INSURERS TO PROVIDE INFORMATION PRIOR TO LITIGATION REGARDING POLICY PROVISIONS AND POLICY LIMITS UPON WRITTEN REQUEST AND TO GIVE AN INSURER WHO PROVIDES SUCH INFORMATION THE OPTION OF INITIATING MEDIATION WITH THE PERSON WHO SOUGHT THE INFORMATION.

Senator Ballance moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 132** - AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

Ralph Knott, Clerk of Court in Franklin County, was recognized to speak on the bill.

Senator Miller moved to amend the bill on Page 2, Line 42 and Page 3, Lines 7 and 8. The motion carried by voice vote. (Amendment attached.)

Senator Gulley moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Senator Hartsell was recognized to explain **Senate Bill 162** - AN ACT TO MAKE TECHNICAL, CLARIFYING AND SIMILAR MINOR CHANGES TO CHAPTER 48 OF THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Hartsell moved to adopt a Proposed Committee Substitute for Senate Bill 162 for discussion. The motion carried by voice vote.

Senator Ballantine moved to amend the Proposed Committee Substitute on Page 10, Lines 40 and 41. The motion carried by voice vote. (Amendment attached.)

Senator Horton moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Gulley was recognized to explain **Senate Bill 240** - AN ACT TO STRENGTHEN THE LIMITATION ON CERTAIN KINDS OF POLITICAL FUND-RAISING WHILE THE GENERAL ASSEMBLY IS IN REGULAR SESSION.

Bill Gilkeson, Committee Co-Counsel, was recognized to speak on the bill.

Senator Horton moved to give the bill a favorable report. The motion carried by voice vote.

Senator Winner, acting Chair, recognized Senator Horton to explain **Senate Bill 264** - AN ACT TO PROVIDE LIMITED LIABILITY TO EMPLOYERS WHO DISCLOSE INFORMATION ABOUT AN EMPLOYEE WHEN THE EMPLOYER IS PROVIDING A REFERENCE.

Senator Lucas moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 430** - AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

Senator Odom moved to amend the bill on Page 2, Line 36. The motion carried by voice vote. (Amendment attached.)

Dana Cope and Mary Carol Lewis, with the Dept. of Labor, were recognized to speak on the bill.

Senator Rand moved to amend the bill on Page 2, Line 23. The motion carried by voice vote. (Amendment attached.)

After discussion by the Committee, Senator Cooper requested that the bill be held and brought up at a future meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA

## SENATE JUDICIARY COMMITTEE
## APRIL 17, 1997

| | | |
|---|---|---|
| SB 132 | Clerk/Year's Allowance | Odom |
| SB 162 | Adoption Technical Amendments | Hartsell |
| SB 240 | Limit Fundraising in Session | Gulley |
| SB 264 | Liability for Job References | Horton |
| SB 403 | Restoration of Rights | Ballance |
| SB 430 | Industrial Hygienists | Odom |
| SB 451 | Compensate Erroneously Convicted | Ballance |
| SB 515 | Relitigation Insurance Info/Mediation | Dalton |

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April 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 515 - PRELITIGATION INSURANCE INFORMATION / MEDIATION** - Senator Dalton

Senate Bill 515 would establish a method for an injured party to obtain information on policy coverage and policy limits from an insurance company in exchange for the injured party being willing to enter into mediation on the claim prior to filing suit.

Section 1 of the bill requires an insurer to furnish information concerning the policy provisions and policy limits to a person who claims to have been injured or damaged by another covered by the insurance policy provided that the injured person agrees to participate in mediation of the claim prior to litigation. Once the injured person has agreed to mediation the insurer is required to furnish the information within 30 days.

The information the insurer is required to provided under Section 1 would be discoverable by a party to a lawsuit after the lawsuit is filed under current law. Even though the information is disclosed either under this bill or through discovery, the insurance information is not by reason of this disclosure admissible in evidence in a trial, and generally is not admissible in personal injury or property damages cases.

Section 2 establishes the procedures for prelitigation of insurance claims. The mediation is initiated by the insurer after having provided the insurance information to the injured party as required under Section 1 of the bill. The costs of mediation are to be paid by the insurer. The mediation shall be conducted in accordance with the standard mediation procedures for civil cases in accordance with rules adopted by the Supreme Court to carry out this law. Once the mediation is concluded, the mediator files a certification on the mediation with the clerk. Time periods including any statutes

of limitation are suspended during the mediation and for a period of 30 days after the mediation concludes.

This bill is effective when it becomes law and applies to injuries and property damage that occurs on or after the effective date.

**§1A-1. Rules of Civil Procedure.**

**Rule 26. General provisions governing discovery.**

(a) Discovery methods. -- Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. -- Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. -- Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) Insurance Agreements. -- A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 515

Short Title: Prelitigation Insurance Info./Mediation. (Public)

Sponsors: Senators Dalton; Allran, Ballance, Ballantine, Blust, Cooper, Gulley, Hartsell, Horton, Kinnaird, Miller, Odom, Rand, Reeves, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURERS TO PROVIDE INFORMATION PRIOR TO LITIGATION REGARDING POLICY PROVISIONS AND POLICY LIMITS UPON WRITTEN REQUEST AND TO GIVE AN INSURER WHO PROVIDES SUCH INFORMATION THE OPTION OF INITIATING MEDIATION WITH THE PERSON WHO SOUGHT THE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-33. Insurer required to provide information.**

Upon receiving a written request for information regarding policy provisions or policy limits by any person who claims to have been physically injured or incurred property damage subject to the policy, an insurance company shall notify the person within five business days, on a form developed by the Department, that the insurer is required to provide this information under this section prior to litigation only if the person seeking the information gives written consent to participate in mediation of the person's claim subject to the policy pursuant to G.S. 7A-38.4. Within 30 days of receiving the person's written consent to participate in mediation pursuant to G.S. 7A-38.4, the insurer shall provide the policy limits and a copy of the policy to that person."

Section 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.4. Prelitigation of insurance claims.**

(a) Initiation of Mediation. -- Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits and a copy of the policy in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. -- Costs of mediation, including the mediator's fees, shall be borne by the insurer. When a party to the mediation is represented by an attorney, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. -- Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. -- Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused, without good cause, to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. -- Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section."

Section 3. This act is effective when it becomes law and applies to physical injury or property damage that is incurred on or after that date.

of timely appellate decisions would provide...State government is issuing numerous regulations, which often require clarification in the courts...And, the public is more litigious and dissatisfied with the pace and process of civil cases.

If the civil justice system does not change to meet these challenges, it will become a fragmented and chaotic mix of different processes for resolving disputes. Such a mixture will produce inconsistent and inefficient results, causing public confidence to continue to drop.

Instead, North Carolina must create a coordinated and coherent civil justice system structured to fairly, expeditiously, and effectively resolve disputes. The system must have the responsibility and authority to control the forum and method of dispute resolution—and it should discourage use of the courts to redress grievances that should be resolved elsewhere.

To achieve these ends, North Carolina must:

- Continue to expand beyond a court-centered adversarial system of justice to include different means of dispute resolution
- Encourage the use of those other, nonadversarial means of dispute resolution so that the traditional court process is the least utilized and the last resort
- Make the different forms of dispute resolution accessible and convenient
- Promote prompt resolution, with the least delay and expense
- Create an adaptable and flexible system to deal with a wide variety of disputes in the most appropriate way

If North Carolina's courts can accomplish those goals, they will regain the public's acceptance, confidence and support. The following recommendations will start that process.

RECOMMENDATION 1: **Adopt effective case management techniques that include full use of alternative dispute resolution.**

The principal goal of the trial court in civil cases should be the fair, efficient, economical and timely resolution of disputes. To achieve this goal, the court system must accept the responsibility for case management and employ proven information technology and management techniques that support its effectiveness.

> *"Courts should be the last resort for resolving disputes."*
>
> ■
>
> Representative, Mediation Group

Too often the courts have relied on the parties' lawyers to manage the pace of litigation—an arrangement that has proven inadequate. The courts themselves must be responsible for the system's effective operation and, as part of that responsibility, adopt more effective case management practices at all levels. The case management system should:

- Be implemented statewide
- Set and meet definite goals
- Place responsibility on specific individuals and hold those individuals accountable for results
- Take early control of the cases and retain control throughout the process
- Limit continuances within narrow guidelines
- Provide mandatory training in effective case management techniques to all court personnel with such responsibilities
- Employ sophisticated computer and video technology to monitor cases and share information among the various courts
- Devise alternatives—technological or otherwise—to mandatory attendance in person at all conferences and hearings

amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) Insurance Agreements. — A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation; Materials. — Subject to the provisions of subsection (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's consultant, surety, indemnitor, insurer, or agent only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court may not permit disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation in which the material is sought or work product of the attorney or attorneys of record in the particular action.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(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 sub-

pointed for an initial term of two years. Members may serve no more than two consecutive terms. The Chief Justice shall designate one of the judge members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

(d) 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 mediation training programs operation under this Article. 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. (1995, c. 500, s. 1.)

**Editor's Note.** — Session Laws 1995, c. 500, s. 6 provides that s. 3, which added this section, is effective October 1, 1995, and shall apply, after the Supreme Court has adopted rules implementing the act, to all superior court civil actions filed in any county after the date the program is implemented in that county. The act also applies to all previously filed actions which are or have been specifically ordered to a mediated settlement conference by a senior resident superior court judge under G.S. 7A-38 prior to its repeal.

Session Laws 1995, c. 500, s. 5, contains a severability clause.

## § 7A-38.3. Prelitigation mediation of farm nuisance disputes.

(a) Definitions. — As used in this section:

(1) "Farm nuisance dispute" means a claim that the farming activity of a farm resident constitutes a nuisance.

(2) "Farm resident" means a person holding an interest in fee, under a real estate contract, or under a lease, in land used for farming activity when that person manages the operations on the land.

(3) "Farming activity" means the cultivation of farmland for the production of crops, fruits, vegetables, ornamental and flowering plants, and the utilization of farmland for the production of dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(4) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a farm nuisance dispute.

(5) "Nuisance" means an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.

(6) "Party" means any person having a dispute with a farm resident.

(7) "Person" means a natural person, or any corporation, trust, or limited partnership as defined in G.S. 59-102.

(b) Voluntary Mediation. — The parties to a farm nuisance dispute may agree at any time to mediation of the dispute under the provisions of this section.

(c) Mandatory Mediation. — Prior to bringing a civil action involving a farm nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to this section. If a farm resident or any other party brings an action involving a farm nuisance dispute, this action shall, upon the motion of any party prior to trial, be dismissed without prejudice by the court unless any one or more of the following apply:

(1) The dispute involves a claim that has been brought as a class action.

(2) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (g) of this section.
(3) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section.
(4) The court finds good cause for a failure to attempt mediation. Good cause includes, but is not limited to, a determination that the time delay required for mediation would likely result in irreparable harm or that injunctive relief is otherwise warranted.

(d) Initiation of Mediation. — Prelitigation mediation of a farm nuisance dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(e) Mediation Procedure. — Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(f) Waiver of Mediation. — The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(g) Certification That Mediation Concluded. — Immediately upon a waiver of mediation under subsection (f) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(h) Time Periods Tolled. — Time periods relating to the filing of a claim or the taking of other action with respect to a farm nuisance dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section. (1995, c. 500, s. 1.)

**Editor's Note.** — Session Laws 1995, c. 500, s. 6 provides that s. 3, which added this section, is effective October 1, 1995, and shall apply, after the Supreme Court has adopted rules implementing the act, to all superior court civil actions filed in any county after the date the program is implemented in that county. The act also applies to all previously filed actions which are or have been specifically ordered to a mediated settlement conference by a senior resident superior court judge under G.S. 7A-38 prior to its repeal.

Session Laws 1995, c. 500, s. 5, contains a severability clause.

**§ 7A-39:** Reserved for future codification purposes.

## ARTICLE 6.

## *Retirement of Justices and Judges of the Appellate Division; Retirement Compensation; Recall to Emergency Service; Disability Retirement.*

### § 7A-39.1. Justice, emergency justice, judge and emergency judge defined.

(a) As herein used "justice of the Supreme Court" includes the Chief Justice of the Supreme Court and "judge of the Court of Appeals" includes the Chief Judge of the Court of Appeals, unless the context clearly indicates a contrary intent.

(b) As used herein, "emergency justice", "emergency judge", or "emergency recall judge" means any justice of the Supreme Court or any judge of the Court of Appeals, respectively, who has retired subject to recall for temporary service. (1967, c. 108, s. 1; 1985, c. 698, s. 16(a); 1995, c. 108, s. 2.)

**Effect of Amendments.** — The 1995 amendment, effective July 1, 1995, substituted "'emergency justice', 'emergency judge', or 'emergency recall judge'" for "'emergency justice' or 'emergency judge'" in subsection (b).

**CASE NOTES**

**Cited** in Gentry v. Uniform Judicial Retirement Sys., 378 F. Supp. 1 (M.D.N.C. 1974).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 132

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 or clerk of court ~~shall~~ shall, upon assignment, 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 magistrate.**

The magistrate or clerk of court ~~shall~~ shall, upon assignment, 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.

**North Carolina General Assembly**
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April 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 132 - AUTHORIZE CLERK TO ALLOCATE SPOUSE AND CHILDREN'S YEAR'S ALLOWANCE** - Senator Odom.

Senate Bill 132 would authorize the clerk of court, in addition to the magistrate, to allocate portions of a decedent's estate to the surviving spouse and minor children. This bill 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 a person who dies. 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 or estate.

Under current law, application for the allowance is made to a magistrate to approve the year's allowance and to determine what personal property should be allocated to the allowance. This bill would amend Article 4 of Chapter 30 to authorize the clerk, in addition to a magistrate, to approve a year's allowance. According to the Courts Commission, in many cases the clerk actually performs the work on the application and has it signed by a magistrate. In those cases the clerk would be the proper person to approve the year's allowance.

Section 4 of the bill authorizes the clerk to assess a fee of $4.00 for hearing the application, which is the same fee charged by a magistrate under the current law.

The bill would become effective October 1, 1997 and would apply to applications for allowances filed on or after that date.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
Senate Bill 132

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

S132-ARU-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator_____

moves to amend the bill on page 2, line 42,
by rewriting the line to read:
"of the county. ~~The magistrate~~ The clerk of court, or magistrate upon assignment, shall ascertain"; and

on page 3, lines 7 and 8,
by rewriting the lines to read:
"'**§ 30-21. Report of clerk or magistrate.**
The ~~magistrate~~ clerk of court, or magistrate upon assignment, shall make and sign three".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, April 17, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE, AS AMENDED**

S.B. **132** Clerks/Year's Allowance
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 162*

Short Title: Adoption Technical/Minor Amendments. (Public)

Sponsors: Senators Hartsell; and Winner.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO CHAPTER 48 OF THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

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 that 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:

"**§ 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~~ 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 denied 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 petitioners, to the county director of social services or licensed child-placing agency that made the report to the court, and to the Department of Human Resources, and they shall be entitled to a hearing on the issue.

(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. 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."

Section 8. (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 adoption of a minor 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. In the adoption of an adult who was not born in this State, the Division shall transmit a copy of the final order and any other required information to the adoptee."

(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 becomes effective July 1, 1996. The remainder of this section becomes effective October 1, 1997.

Section 9. 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."

Section 10. (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,~~ executed by any one parent or guardian pursuant to G.S. 48-3-701, even if ~~only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated,~~ the minor has a guardian or other parent whose consent is required before an adoption can be granted, unless ~~the other parent~~ one of these other individuals notifies the agency in writing of ~~the parent's~~ that individual's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent or guardian to obtain the consent or relinquishment of ~~the~~ any other parent or guardian or to terminate the guardian's authority pursuant to Chapter 35A of the General Statutes and the rights between the minor and ~~the~~ any other parent 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 11. (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.

(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 more than two years, the court may, but is not required to, order a report unless the minor's consent is to be waived or the minor has revoked a consent."

(b) G.S. 48-4-104 is repealed.

Section 12. Except as otherwise provided, this act is effective when it becomes law.

**North Carolina General Assembly**
**Legislative Services Office**

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April 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 162 - ADOPTION LAW AMENDMENTS** - Senator Hartsell

The Proposed Committee Substitute for 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. My bill summary will be limited to an analysis of Sections 14 through 18.

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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

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

**MEMORANDUM:**

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: April 10, 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 18 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 162*
Proposed Committee Substitute S162-PCS7730

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, AND TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES.

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. Except as otherwise provided, 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. 162 _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) ~~HARTSELL~~ Ballantine
Sen. )

moves to amend the bill on page 10, lines 40 + 41

( ) WHICH CHANGES THE TITLE

by INSERTING A NEW SECTION BETWEEN THE LINES

A NEW SECTION TO READ:

"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

"; AND

BY RENUMBERING THE REMAINING SECTION; AND

ON PAGE 3, LINE 16

BY REWRITING THE LINE TOREAD:

"CERTIFICATES OF ADOPTEES AND TO EXTEND THE EFFETIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 22, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **162** Adoption Law Amendments

| | |
|---|---|
| Draft Number: | PCS 7765 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper Sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 240

Short Title: Fund-Raising in Session. (Public)

Sponsors: Senators Gulley; and Page.

Referred to: Judiciary.

February 15, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LIMITATION ON CERTAIN KINDS OF POLITICAL FUND-RAISING WHILE THE GENERAL ASSEMBLY IS IN REGULAR SESSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.13A is repealed.

Section 2. Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-279.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with, or whose parent entity employs or contracts with, a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of the Council of State, a member of the General Assembly, or a political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly. 'Limited contributee' does not include a State, county, or congressional district executive committee of a political party.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the

General Assembly either adjourns sine die, or recesses or adjourns for more than 10 days.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session during an odd-numbered year, no limited contributee, or a real or purported agent of a limited contributee, shall solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee.

(c) Prohibited Contributions. -- While the General Assembly is in regular session during an odd-numbered year:

(1) No limited contributor shall make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor, but no individual shall be prosecuted under this section for accepting a contribution unless the State Board of Elections has notified the individual of the apparent violation in writing by certified mail, has given the individual an opportunity to return the contribution, and, within 10 days of the receipt of the notification, the individual has failed to return the contribution."

Section 3. This act becomes effective January 1, 1999, and applies to all contributions solicited, accepted, or made on or after that date.

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April 8, 1997

TO: Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Senate Bill 240 – Limits on Fund-Raising in Session.

**Senate Bill 240, introduced by Senator Gulley, would rewrite and expand the statute that places special limits on political contributions during legislative sessions.**

The current statute, G.S. 163-278.13A, prohibits a legislator, a member of the Council of State, or a political committee the principle purpose of which is to assist one or more of those officeholders from soliciting or accepting a contribution from "or at the behest or recommendation of " a registered lobbyist while the General Assembly is in regular session. It prohibits a lobbyist from making a contribution to any of those entities. Exempted under current law are:

- Contributions made to political party executive committees,
- Contributions made to or solicited for committees that operate statewide in conjunction with a party for that party's candidates for General Assembly or Council of State
- Contributions by legislators and Council of State members to their own campaigns.
- Charitable contributions.
- Contributions to defray expenses connected with the contesting of election results.
- Contributions to officeholders who have filed notice as candidates. (This exemption in effect eliminates the Short Session, which occurs during election year when legislators have filed as candidates, from the fund-raising limitation.)

Extra sessions are exempt from the prohibition under current law. Current law makes violation a Class 2 misdemeanor, but says prosecution cannot take place for accepting or giving a contribution unless the State Board of Elections notifies the person of the apparent violation and gives the person 10 days after notice to give the money back or ask for it back.

SB 240 repeals the current law and replaces it with a rewritten version. The new version uses the defined terms "limited contributor" (those who cannot give or be solicited during session) and "limited contributee" (those who cannot solicit and accept during session). Instead of applying its provisions during regular session but exempting filed candidates, the bill applies to the regular session during an odd-numbered year.

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The substantive changes in SB 240 are these:

- Lobbyist-connected PACs. Those who may not give or be solicited are not just lobbyists, but also political committees whose parent entities employ or contract with a lobbyist. The bill also specifically includes a lobbyist's agent.

- Fewer Exceptions. There are fewer exceptions to who may not solicit or accept. The "political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates" for legislature is gone as an exception. Although political party executive committees are excluded from the definition of "limited contributee" and therefore from a complete in-session ban on fundraising from lobbyists and lobbyist-connected PACs, party committees may not be used during session as a conduit for money earmarked for a legislator. Nor may they be used as a repository for money a legislator solicits from a lobbyist.

- Solicitation Ban Spelled Out. The prohibition on soliciting during session is spelled out: No "limited contributee" (legislator, for example) or his/her real or purported agent shall solicit a contribution from a lobbyist or a lobbyist's political committee to be made to that legislator or to any other candidate, officeholder, or political committee. So, someone could not call a lobbyist and say, "I am calling on behalf of Sen. So-and-So and he would like you to make a contribution to the executive committee of his party."

- Indirect Contributions Prohibited. The prohibition on contributions during session is spelled out: No limited contributor (lobbyist, for example) shall give to a limited contributee (legislator, for example). The legislator shall not accept a contribution from the lobbyist. Indirect contributions are addressed as well: The lobbyist may not make a contribution to a political committee, requesting that that political committee in turn make the contribution to the limited contributee. The lobbyist also may not transfer money to anyone, directing that that person give to a legislator.

- Enforcement. The 10-day grace period after notice to undo the violation is retained for someone who accepted a prohibited contribution, but that grace period is repealed for anyone caught giving one.

The bill would go into effect January 1, 1999.

## § 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of the Council of State; or

(2) A member of the General Assembly; or

(3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or

(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or

(3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or

(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or

(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns sine die; or

(2) Recesses or adjourns for more than 10 days. (1991, c. 740, s. 2; 1993, c. 539, s. 1114; 1994, Ex. Sess., c. 24, s. 14(c).)

**Editor's Note.** — Session Laws 1991, c. 740, s. 3 makes this section effective July 16, 1991.

Session Laws 1991, c. 740, s. 3 further provides that the act shall be implemented within funds available to the Secretary of State, and that nothing in the act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of the act.

Session Laws 1993, c. 539, s. 1114, 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."

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April 15, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 264-LIABILITY FOR JOB REFERENCES** - Senator Horton

Senate Bill 264 would grant qualified immunity to a person who gives a job reference on a current or former employee to a prospective employer, who acts in good faith, does not give information known to be false, or the information is not given with malice or reckless disregard for the truth.

The bill provides that an employer or former employer who discloses information about a current or former employee at the request of a prospective employer or the employee is presumed to be acting in good faith and is not liable for civil damages for the disclosure of the information or the consequences of the disclosure. If the employee believes he or she was harmed by the disclosure, in a suit for damages, the employee must overcome the presumption of good faith by showing, by a preponderance of the evidence, that the information disclosed was in fact false, and that the employer either knew the information was false, or acted with malice or reckless disregard for the truth. "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.

Under the bill this qualified immunity also extends to employees and agents of the employer authorized to give this information. The bill also 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.

S264-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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 1

SENATE BILL 430

Short Title: Industrial Hygienists. (Public)

Sponsors: Senators Odom; Cochrane, Cooper, Lucas, Reeves, and Shaw of Cumberland.

Referred to: Judiciary.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Industrial Hygiene.

"**§ 90-515. Definitions.**

The following definitions apply in this Article:

(1) 'American Board of Industrial Hygiene'. -- A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.

(2) 'Certified Industrial Hygienist (CIH)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).

(3) 'Industrial Hygiene'. -- The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or

significant discomfort and inefficiency among workers and the general public.

(4) 'Industrial Hygienist'. -- A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these contaminants and stressors, or to reduce the level of human exposure to them.

(5) 'Industrial Hygienist in Training (IHIT)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT).

"**§ 90-516. Unlawful acts.**

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, perform activities of a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, perform activities of an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1, and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of said title."

Section 2. This act becomes effective January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 430

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

S430-ARU-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator

1 moves to amend the bill on page 2, line 36,
2 by rewriting the line to read:
3 "Section 2. This act becomes effective January 1, 1998,
4 and applies to causes of action arising on or after that date."

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

COMMITTEE SUBSTITUTE _____

Rep. )
Sen. ) _____

1 moves to amend the bill on page 2, line # 23
2 ( ) WHICH CHANGES THE TITLE
3 by REWRITING THE LINE TO READ:
4 "USE ANY ADVERTISEMENT, BUSINESS"
5
6
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19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, April 17, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **240** Fund-raising in Session
Sequential Referral: None
Recommended Referral: None

S.B. **264** Liability for Job References
Sequential Referral: None
Recommended Referral: None

S.B. **515** Prelitigation Insurance Info./Mediation
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: Will take to Sen. Cooper

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 17, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Becky Brown | Labor |
| Dana Cope | " |
| Mary Carol Lewis | " |
| Susan Buchanan | Eastern Research Group. |
| Paul Webb | Glaxo Wellcome |
| Doris Heaver | N.C. CWA Political Council |
| [illegible] | UNCG |
| Steven Arms | UNCG |
| [illegible] | AOC |
| Chris Scott | NC ACL-CIO |
| Bill Alexander | NC PBA |
| Rickey Padgett | NC PBA |
| N.R. Burkley | NC PBA |
| Keith A. Fox | NC PBA |
| Robert King | NC PBA |
| John T. Alleredith MD | Physician of the day. |
| Richard Williams | NCAJ/PA |
| Amanda Diahy | NCATL |
| 33 students | Berlington |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 22, 1997

The Senate Judiciary Committee met on Tuesday, April 22, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Warren to explain **Senate Bill 376** - AN ACT TO AUTHORIZE TEACHING HOSPITALS AFFILIATED WITH CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA TO ESTABLISH CAMPUS LAW ENFORCEMENT AGENCIES.

Craig Quick, Assistant Vice President at Pitt Memorial Hospital in Greenville, was recognized to speak on the bill.

Senator Reeves moved to give the bill a favorable report. The motion carried by voice vote.

Senator Reeves was recognized to explain **Senate Bill 456** - AN ACT TO REMOVE THE SUNSET FROM THE 1995 AMENDMENTS TO THE LAWS PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

Senator Ballance moved to give the bill a favorable report. The motion carried by voice vote.

Senator Dalton was recognized to explain **Senate Bill 571** - AN ACT TO PLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

Senator Webster was recognized to explain **Senate Bill 402** - AN ACT TO EXEMPT SIMPLE RETIREMENT ACCOUNTS FROM THE CLAIMS OF CREDITORS.

Senator Ballance moved to give the bill a favorable report. The motion carried by voice vote.

Senator Ballance was recognized to explain **Senate Bill 403** - AN ACT TO RESTORE THE RIGHTS OF CITIZENSHIP OF A CONVICTED PERSON IF THAT PERSON IS RELEASED FROM INCARCERATION OR IS GIVEN A SENTENCE WITHOUT INCARCERATION.

After discussion by the Committee, Senator Martin moved to send the bill to a subcommittee for further discussion. The motion carried by voice vote.

Senator Soles, acting Chairman, recognized Senator Cooper to explain **Senate Bill 708** - AN ACT TO REQUIRE CERTAIN DISCLOSURES BY THE SPONSORS OF POLITICAL ADVERTISEMENTS.

Senator Reeves moved to adopt a Proposed Committee Substitute for Senate Bill 708 for discussion. The motion carried by voice vote.

Lt. Governor Dennis Wicker was recognized to speak on the bill.

The following people were also recognized to speak on the bill or to answer questions from the Committee:

Wade Hargrove, N. C. Association of Broadcasters
Bill Gilkeson, Legislative Research Staff
Mack McCorkle, Lt. Governor's Staff
Debra Ross, Legislative Director of the ACLU

Senator Rand moved to amend the Proposed Committee Substitute on Page 5, Line 15. The motion failed for lack of a majority vote (11-11).

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Cooper was recognized to explain **Senate Bill 759** - AN ACT TO CREATE THE VERDICT OF GUILTY BUT MENTALLY ILL AND TO PROVIDE FOR THE TREATMENT, MONITORING, AND SUPERVISION OF INSANITY ACQUITTEES.

Mark Potts, with the Institute of Government was recognized to speak on the bill.

Further discussion of the bill will continue at a future meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# APRIL 22, 1997

| | | |
|---|---|---|
| SB 115 | Community Penalties/Record Checks | Gulley |
| SB 116 | Jurisdictional Amount Increase | Gulley |
| SB 117 | Modify Two DMV Definitions | Gulley |
| SB 228 | Child Abuse Report Penalty | Winner |
| SB 325 | Concealed Handgun Exemption | Odom |
| SB 353 | Add NCCJETSC Member | Rand |
| SB 376 | Campus Law Enforcement | Warren |
| SB 386 | Clarify Atty-in-Fact Gifts | Ballantine |
| SB 402 | Debtor Protection/Simple IRAs | Webster |
| SB 403 | Restoration of Rights | Ballance |
| SB 430 | Industrial Hygienists | Odom |
| SB 451 | Compensate Erroneously Convicted | Ballance |
| SB 456 | Cartways Sunset Off | Reeves |
| SB 540 | Standardize Law Enforcement Discipline | Miller |
| SB 561 | Campus Police/Concealed Handguns | Odom |
| SB 571 | Controlled Substance/Schedule II | Dalton |
| SB 658 | Workers' Compensation Fraud | Kerr |
| SB 663 | Absentee Voting Changes | Rucho |
| SB 708 | Stand By Your Ad | Cooper |
| SB 759 | Guilty But Mentally Ill/2 | Cooper |

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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 456 - CARTWAYS SUNSET OFF** - Senator Reeves

Senate Bill 456 would remove the sunset on some of the changes made to the cartway law by the 1995 General Assembly.

House Bill 545 of the 1995 Session made numerous technical and substantive changes to the cartway statute. Sections 2 and 3 of that bill which amended G.S. 136-69 and 136-70 are scheduled to sunset on July 1, 1997. This bill would remove the sunset provision and would make those changes permanent in the law.

A cartway is a court-ordered easement across the lands of another to an otherwise landlocked tract of land. In North Carolina, cartways have traditionally been granted to permit the owner of the landlocked property to remove the products arising from the land, such as cultivating crops, cutting and removing timber, working quarries, mines or minerals, operating industrial or manufacturing plants, or for use as a public or private cemetery. The law sets out the method for determining when a cartway should be permitted, where the cartway is to be located, and the amount of compensation the other property owner is entitled to for this right of access.

The 1995 changes to G.S. 136-69 lowered the requirements necessary to obtain a cartway and expanded the purposes a cartway can be used for. The primary changes were to permit a cartway to be granted for using the landlocked property for single-family homesteads consisting of at least seven acres per homestead and to more specifically define the size of the cartway. The 1995 changes also dealt with the relationships between cartways and railroad rights-of-way and railroad crossings.

The 1995 changes to G.S. 136-70 removed the automatic five-year termination of cartways granted to remove timber.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

A copy of the 1995 bill is attached.

This bill is effective when it becomes law.

CHAPTER 513
OF THE 1995 SESSION LAWS

HOUSE BILL 545

AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

Section 1. G.S. 136-68 reads as rewritten:

"**§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.**

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages. ~~and the~~ The procedure established under Chapter ~~40,~~ 40A, entitled 'Eminent Domain,' shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section."

Sec. 2. G.S. 136-69 reads as rewritten:

"**§ 136-69. Cartways, tramways, etc., laid out; procedure.**

~~If~~ In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public ~~road~~ road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in ~~the preceding section (G.S. 136-68), and if it shall~~ G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not ~~less~~ more than 18 feet ~~in width,~~ of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cableways, chutes, and ~~flumes, and~~ flumes. If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there exists a private railroad crossing, that private railroad crossing may be used as part of a cartway established under this Article provided the person, firm, association or corporation seeking the cartway agrees to share proportionately with other landowners authorized to use the crossing the cost of maintaining the private crossing and to protect and hold harmless the railroad against all liability associated with the crossing, provided the railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except as herein provided for the establishment of a cartway over an existing private railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which has been condemned by a railroad,

or has been obtained for a railroad's use as a right-of-way, depot, or station house shall be used for the establishment of a cartway or other use under this Article except by agreement with the railroad. Should a petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate in good faith the location of the new crossing at the requested location or some other mutually agreeable location. The jury of view shall assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. A permissive use of a right-of-way or easement across the land of another shall not be a bar to the establishment of a cartway under this Article. In determining the path of a cartway, tramway or railway the jury of view shall give priority to the location of previously used easements or cartways."

Sec. 3. G.S. 136-70 reads as rewritten:

"**§ 136-70. Alteration or abandonment of cartways, etc., in same manner.**

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested ~~party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same.~~ party. A cartway established under this Article shall not terminate until the time specified in the petition and as found necessary and proper by the court."

Sec. 3a. Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

Sec. 4. This act is effective upon ratification but sections 2 and 3 shall expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 456

Short Title: Cartways Sunset Off. (Public)

Sponsors: Senator Reeves.

Referred to: Judiciary.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM THE 1995 AMENDMENTS TO THE LAWS PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 513 of the 1995 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ~~ratification but sections 2 and 3 shall expire on July 1, 1997.~~ ratification. This act applies to actions to establish cartways filed on or after the effective ~~date, but before July 1, 1997.~~ date."

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

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April 22, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 571 - CONTROLLED SUBSTANCE / SCHEDULE II**
Senator Rand

Senate Bill 571 would add the drug Remifentanil to the list of Schedule II controlled substances. Remifentanil is an analgesic and anesthetic that is available under the tradename Ultiva. It was recently approved by the FDA for analgesia during induction and maintenance of general anesthesia for inpatient and outpatient procedures, continuation analgesia into the immediate postoperative period under the direct supervision of an anesthesia practitioner in a postoperative anesthesia care unit or intensive care setting, and analgesia during monitored anesthesia care. The bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 571

Short Title: Controlled Substance/Schedule II. (Public)

Sponsors: Senators Dalton; Garwood, Jenkins, Phillips, Weinstein, and Wellons.

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO PLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

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

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

01. Alfentanil.
1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
3a. Carfentanil.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
7a. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.

11. Methadone.
12. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Sufentanil.
23. Remifentanil."

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

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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 402 - DEBTOR PROTECTION FOR SIMPLE RETIREMENT ACCOUNTS** - Senator Webster

Senate Bill 402 would add simple retirement accounts to the list of retirement accounts that are exempt from execution for the satisfaction of judgments.

This bill adds simple retirement accounts as set forth in Section 408(p) of the Internal Revenue Code to individual retirement accounts, individual retirement annuities, and trusts established under Section 408(c) of the Internal Revenue Code as types of retirement funds that are exempt from execution by the sheriff in satisfaction of judgments.

This bill becomes effective October 1, 1997 and applies to judgments entered on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 402

Short Title: Debtor Protection/Simple IRAs. (Public)

Sponsors: Senators Webster; Ballance, Ballantine, Blust, Carpenter, Carrington, Clark, Cooper, East, Forrester, Foxx, Garwood, Horton, Ledbetter, McDaniel, Odom, Page, and Shaw of Guilford.

Referred to: Judiciary.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT SIMPLE RETIREMENT ACCOUNTS FROM THE CLAIMS OF CREDITORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

(1) The debtor's aggregate interest, not to exceed ten thousand dollars ($10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's aggregate interest in any property, not to exceed three thousand five hundred dollars ($3,500) in value less any amount of the exemption used under subdivision (1).

(3) The debtor's interest, not to exceed one thousand five hundred dollars ($1,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed three thousand five hundred dollars ($3,500) in value for the debtor plus seven hundred fifty dollars ($750.00) for each dependent of the debtor, not to exceed three thousand dollars ($3,000) total for dependents,

in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed seven hundred fifty dollars ($750.00) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal injury or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, simple retirement accounts as described in section 408(p) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90."

Section 2. This act becomes effective October 1, 1997, and applies to judgments entered on or after that date.

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April 17, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 403 - RESTORATION OF RIGHTS**
Senator Ballance

Senate Bill 403 would restore citizenship rights to persons who have been convicted of a felony and who are released from prison on parole or who are given alternative sentences.

Article VI, Section 2 of the North Carolina Constitution provides that no person adjudicated guilty of a felony shall be permitted to vote unless that person's citizenship rights have been restored in the manner prescribed by law. (See reverse side for text) G. S. 163-55 provides that a person convicted of a felony cannot register or vote unless citizenship rights have been restored. Under G.S. 163-275, it is a Class I felony for such person to vote.

Convicted felons are also prohibited from the following, until such time as their citizenship rights are restored: service as juror, qualification for ABC permit, employment in the sale or distribution of alcoholic beverages, qualification to serve as personal representative in estate matters, qualification to serve as guardian of an estate, employment with a licensee under the Structural Pest Control Act, service as county director of elections.

G.S. 13-1 currently provides for the automatic restoration of citizenship rights when a person is unconditionally discharged from prison or from a suspended sentence, receives an unconditional pardon, or satisfies the conditions of a pardon. Under current law, a person convicted of a felony who is in prison or who is on parole or probation, serving a suspended sentence or otherwise subject to supervision is not eligible to vote, hold office, or participate in the other activities listed in the above paragraph. Senate Bill 403 would restore citizenship rights to any convicted felon who is not serving an active prison sentence.

The bill would become effective January 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

N. C. Constitution
Article VI, Section 2 & 8



**Sec. 2. Qualifications of voter.**

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

**Sec. 8. Disqualifications for office.**

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 403

Short Title: Restoration of Rights. (Public)

Sponsors: Senator Ballance.

Referred to: Judiciary.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE RIGHTS OF CITIZENSHIP OF A CONVICTED PERSON IF THAT PERSON IS RELEASED FROM INCARCERATION OR IS GIVEN A SENTENCE WITHOUT INCARCERATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 13-1 reads as rewritten:

"**§ 13-1. Restoration of citizenship.**

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The ~~unconditional~~ discharge of an inmate by the State Department of Correction or the North Carolina Department of ~~Correction, of a probationer by the State Department of Correction, or of a parolee by the Department of Correction; or of a defendant under a suspended sentence by the court.~~ Correction.

~~(2) The unconditional pardon of the offender.~~

~~(3) The satisfaction by the offender of all conditions of a conditional pardon.~~

(4) With regard to any person convicted of a crime against the United States, the ~~unconditional~~ discharge from incarceration of such person by the agency of the United States having jurisdiction of such ~~person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.~~ person.

(5) With regard to any person convicted of a crime in another state, the ~~unconditional~~ discharge of such person from incarceration by the agency of that state having jurisdiction of such ~~person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.~~ person.

(6) The imposition by a court of a sentence other than jail or imprisonment, provided that:

a. Citizenship shall be forfeited if jail or imprisonment is imposed because of a failure of the offender to meet conditions of the nonincarcerating sentence; and

b. If the sentence included a mixture of incarceration and other forms of punishment, the offender's citizenship shall not be restored until the offender has been released from incarceration."

Section 2. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 708

Short Title: Stand By Your Ad. (Public)

Sponsors: Senators Cooper, Conder, Plyler, Hartsell, Horton; Albertson, Blust, Clark, East, Forrester, Garwood, Gulley, Hoyle, Jenkins, Kerr, Ledbetter, Lee, McDaniel, Miller, Odom, Page, Perdue, Phillips, Rand, Reeves, Rucho, Shaw of Guilford, Webster, and Winner.

Referred to: Judiciary.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURES BY THE SPONSORS OF POLITICAL ADVERTISEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.16 reads as rewritten:

"**§ 163-278.16. Regulations regarding ~~contributions, expeditures and media advertising~~ timing of contributions and expenditures.**

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

~~(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless~~

~~(1) It bears the legend or includes the statement: "Paid for by (or Sponsored by)..... (Name of candidate, political committee, referendum committee, individual)";~~

~~(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;~~

~~(3) The sponsor states in the media advertisement its position:~~

~~a. For or against the candidate; or~~

~~b. For or against an opposing candidate~~

~~provided that this subdivision applies only if the media advertisement is made for or against a candidate; and~~

~~(4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.~~

~~The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.~~

~~The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts.~~ "

Section 2. Article 22A of Chapter 163 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Disclosure Requirements for Media Advertisements.

**"§ 163-278.39. Disclosure requirements for political advertisements in print media.**

(a) Required Disclosure. -- No print-media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee, or individual unless all the following conditions are met:

(1) It bears the visual legend: 'Paid for by (or Sponsored by)..... [Name of candidate, political committee, referendum committee, individual].'

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1). This subdivision applies only if the sponsor is a political committee or referendum committee.

(3) The sponsor states in the print-media advertisement its position:

a. For or against the candidate; or

b. For or against an opposing candidate.

This subdivision applies only if the print-media advertisement is made for or against a candidate; and

(4) The sponsor states in the print-media advertisement its position for or against the ballot measure. This subdivision applies only if the print-media advertisement is made for or against a ballot measure.

(5) The sponsor states in the advertisement whether it is authorized by a candidate. This subdivision applies only if:

a. The advertisement supports or opposes a candidate; and

b. The sponsor is an individual other than the candidate or a political committee other than the committee of that candidate.

The visual legend in the advertisement shall state either 'Authorized by [name of candidate], candidate for [name of office]' or 'Not authorized by a candidate.'

(b) Size Requirements. -- All the statements required in an advertisement by subsection (a) of this section shall constitute at least ten percent (10%) of the space of the advertisement. If each copy of an advertisement consists of multiple pages, folds, or faces, the requirement of the previous sentence applies only to one page, fold, or face in each copy.

(c) Print-Media Responsibility. -- The print media shall not publish any political advertisement unless it bears the visual legends required in this section.

(d) Misrepresentation of Authorization. -- Notwithstanding G.S. 163-278.27(a), any individual, person, political committee, or referendum committee that submits to the print media an advertisement bearing any visual legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

**"§ 163-278.39A. Disclosure requirements for political advertisements related to candidates on television and radio.**

(a) Purpose. -- It is the purpose of this section to effectuate the State's compelling interest in the integrity of its electoral processes by fulfilling the public's right to know the identity of sponsors of sophisticated and professional campaign advertisements on television and radio. In contrast to advertisements in print, those on television and radio present special challenges to the public's right to know because any disclosure on an electronic ad lacks permanence.

(b) Relation to Federal Law. -- State law incorporates the visual disclosure requirements of federal law on television and radio outlets. Any violation of federal visual disclosure requirements is a violation of State law.

(c) Candidate Advertisements on Television and Radio. -- The sponsoring candidate of an advertisement on television or radio shall orally state at least the following words: 'I am (or "This is...") [candidate's name], candidate for [name of office], and I (or "my campaign...") sponsored this ad.'

(d) Political Party Advertisements on Television and Radio. -- The chair, executive director, or treasurer of an official political party organization that sponsors an advertisement on television or radio shall orally state at least the following words: 'The [name of political party organization] sponsored this ad opposing/supporting

[name of candidate] for [name of office].' The disclosed name of the political party organization must include the name of the political party as it appears on the ballot.

(e) Political Action Committee Advertisements on Television and Radio. -- The chief executive officer or treasurer of the political action committee that sponsors an advertisement on television or radio shall orally state at least the following words: 'The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office].' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(f) Advertisements on Television and Radio by an Individual. -- An individual sponsoring an advertisement on television or radio shall orally state at least the following words: 'I am [individual's name], and I sponsored this advertisement opposing/sponsoring [name of candidate] for [name of office].'

(g) All Advertisements on Television Related to Candidate. -- In any television advertisement related to a candidate, an unobscured, full-screen view of the disclosing person, either in photographic form or through the actual appearance of the disclosing person on camera, shall be featured throughout the duration of the disclosure statement. Any visual legend accompanying the disclosure statement shall be at least 32 scan lines in size.

(h) Placement of Disclosure Statement in Television and Radio Advertisements. -- A sponsoring candidate committee, political party organization, political action committee, or individual may place the disclosure statement required by this section at any point during the advertisement. The sponsoring entity may combine the oral disclosure statement required by this section with, or separate it from, any visual disclosure requirement under federal law. But any visual disclosure legend shall be at least 32 scan lines in size.

(i) Choice by Noncandidate Entity of Supporting or Opposing a Candidate. -- In its oral disclosure statement, a sponsoring political party organization, political action committee, or individual may choose either to identify an advertisement as supporting a particular candidate or opposing a particular candidate.

(j) Legal Remedy. -- Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, or individual whose advertising for that elective office violates these disclosure requirements.

(1) Any plaintiff candidate in a statewide race in an action under this section must complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races

may file the notice with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertising by return-receipt mail that a particular advertisement or advertisements failed to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The court shall award reasonable attorneys' fees to a plaintiff candidate who prevails in an action under this section. The plaintiff candidate may bring the civil action personally or authorize his or her candidate committee to bring the civil action.

(3) A sponsoring candidate and the sponsoring candidate's committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the sponsoring candidate is held personally liable for any payment of damages or attorneys' fees, the sponsoring candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(k) No Regulation or Liability of Television or Radio Outlets. -- The disclosure requirements in this section impose no additional liability on or regulation of television or radio outlets beyond that otherwise existing in law.

(l) No Criminal Liability. -- Nothing in this section shall be relied upon or otherwise interpreted to create criminal liability for any person.

**"§ 163-278.39B. Definitions.**

As used in this Part:

(1) 'Print media' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, periodicals, and outdoor advertising facilities.

(2) 'Political action committee' has the same meaning as 'political committee' in G.S. 163-278.6(14), except that 'political action committee' does not include any political party or political party organization.

(3) 'Political party organization' means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(4) 'Scan line' means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

**"§ 163-278.39C. Scope of disclosure requirements.**

The disclosure requirements of this Part apply to those candidates or candidate committees, political party organizations, political action committees, and individuals required to file financial disclosure statements pursuant to this Article or pursuant to federal law. The disclosure requirements of this Part apply to candidates for elective federal office from North Carolina unless and until Congress takes clear action demonstrating that it has preempted the authority of State law."

Section 3. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor."

Section 4. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 5. This act becomes effective January 1, 1998, and applies to all advertisements published 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 this act, 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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April 22, 1997

TO: Sen. Roy A.Cooper, Chair, Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Proposed Committee Substitute for Senate Bill 708 – Stand by Your Ad.

**The Proposed Committee Substitute for Senate Bill 708, introduced by Sens. Cooper, Conder, Plyler, Horton, and Hartsell, requires any sponsor of a political ad to disclose not only who the sponsor is but also whether or not the ad supports or opposes a candidate. In a radio or television ad supporting or opposing a candidate, the sponsor of the ad would have to speak the disclosure statement personally. In a television ad supporting or opposing a candidate, the sponsor's face would have to appear on the screen the whole time the sponsor was speaking the required disclosure.**

Current State law requires that every "media ad" must contain the identification "Paid for by (or "Sponsored by) ... [the name of the sponsor]." If the sponsor is a political committee or referendum committee, the I.D. must use the name that it is required to use, identifying the parent entity of the committee (corporation, labor union, professional association) or the economic interest of the committee, if identifiable. And the I.D. must also state whether the sponsor supports or opposes a candidate or ballot measure. Current law defines "media" to include broadcast, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts. The duty is one for the media as well as the sponsor. The penalty is a Class 2 misdemeanor.

Federal law places the following disclosure restrictions on radio and television outlets licensed by the Federal Communications Commission:

- Any ad must disclose the name of the person sponsoring the ad, or the person on behalf of whom the ad is sponsored. The disclosure shall fully and fairly disclose the true identity of that person.
- Any political ad on television must show the sponsor identification for a least 4 seconds in letters that take up at least 4% of the vertical picture height.

In addition, a candidate is entitled to the "lowest unit charge" of a broadcast station if that candidate makes a personal appearance, by face or voice, during the ad.

Through the Federal Communications Act, the federal government has pre-empted regulation of what television and radio must do, although the 1983 Fifth Circuit U.S. Court of Appeals decision in *KVUE v. Moore* says that there can be aspects of the way radio and TV outlets handle advertising that federal law doesn't address and therefore the States can regulate.

What the federal law does not do is regulate the behavior of State candidates and political committees. They are under the jurisdiction of State law. SB 708 seeks to fill that gap, requiring candidates and other State-regulated political sponsors, rather than the federally regulated broadcasters, put certain disclosures in their ads.

The PCS for SB 708 contains two sets of requirements:

1. The Basic Requirements for any advertisement relating to an election or referendum, if spending for that ad would have to be reported in a campaign finance report.
2. Expanded Requirements for ads on TV and radio that support or oppose a candidate.

The Basic Requirements repeat current law, with these changes:

- If a print media ad supports or opposes a candidate, the ad must say whether or not it is authorized by a candidate.
- "Print media" is defined so as to include not only newspapers, periodicals, and billboards, but also pamphlets and cards.
- The bill removes a statement in current law that makes the print media liable for what appears in its ads.
- The disclosure statement on a print media ad must take up at least 10% of the face of the ad (or 10% of one page of a multi-page ad).
- Misrepresentation by a sponsor in the disclosure statement is raised to a Class 1 misdemeanor.

The Expanded Requirements state that on television and radio ads the sponsor of an ad supporting or opposing a candidate or candidates must appear in person and acknowledge sponsorship of the ad.:

- If the sponsor, is a candidate, the candidate must appear. On television and radio, that means the candidate must speak the words "I am Candidate X and I sponsored this ad." On television, when the candidate is speaking, a picture of that candidate must fill the screen.
- If the sponsor is a political party organization, or political action committee, the chair, executive director, or treasurer of the party must speak the words, "This ad supporting/opposing Candidate X for Office Y was paid for by the Z Party (or Z political action committee)." Again, on television, the speaker's picture must fill the screen while while he or she is talking. The sponsor must choose whether the ad supports or opposes a candidate.
- If the sponsor is an individual, that individual must speak the words, "I am So-and-So, and this ad supporting/opposing Candidate X for Office Y was paid for by me." Again, there is the same visual requirement for television, and the same choice of whether the ad supports or opposes.

If there is a visual legend accompanying the picture of the talking sponsor, it must be 32 scan lines (a TV technical term) in height.

For violating the Expanded Requirements, the bill does not place any liability in addition to federal law on TV or radio outlets. On sponsors, the bill places no criminal liability, but it establishes a monetary civil remedy for a candidate who has complied with the requirements against an opposing candidate or other sponsor who has violated them. Damages would be the value of the ads that were in violation. If the plaintiff can show that he or she notified the sponsor that an ad was in violation and the sponsor continued to run the ad, the damages can be trebled.

The bill would become effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 708
Proposed Committee Substitute S708-PCS1778

Short Title: Stand By Your Ad. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN DISCLOSURES BY THE SPONSORS OF POLITICAL ADVERTISEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Disclosure Requirements for Media Advertisements.

**"§ 163-278.39. Basic disclosure requirements for all political campaign advertisements.**

(a) Basic Requirements. -- No advertisement in the print media or on radio or television whose purchase constitutes an expenditure or contribution required to be disclosed under this Article shall be made by a sponsoring candidate, candidate campaign committee, political party organization, political action committee, referendum committee, or individual unless all the following conditions are met:

(1) It bears the legend or includes the statement: 'Paid for by (or Sponsored by or Furnished by)..... [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, or individual].'

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(3) The sponsor states in the advertisement its position for or against the candidate, provided that this subdivision applies only if the

media advertisement supports or opposes a specific candidate or candidates.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the media advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing a specific candidate or candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either 'Authorized by [name of candidate], candidate for [name of office]' or 'Not authorized by a candidate.' This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(b) Size Requirements. -- In a print media advertisement covered by subsection (a) of this section, all disclosure statements required by that subsection shall constitute at least ten percent (10%) of the space of the advertisement. If a single advertisement consists of multiple pages, folds, or faces, the requirement of the previous sentence applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size.

(c) Misrepresentation of Authorization. -- Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, or sponsoring individual making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

**"§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing candidates.**

(a) Expanded Disclosure Requirements. -- In addition to the basic disclosure requirements in G.S. 163-278.39, any political campaign advertisement on radio or television supporting or opposing a specific candidate or candidates shall comply with the expanded disclosure requirements set forth in this section.

(b) Disclosure Requirements for Television. --

(1) Candidate Advertisements on Television. -- Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is...") [candidate's name], candidate for [name of office], and I (or "my campaign...") sponsored this ad.'

(2) Political Party Advertisements on Television. -- Television advertisements purchased by a political party organization supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and

containing at least the following words: 'The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political Action Committee Advertisements on Television. -- Television advertisements purchased by a political action committee supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office].' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on Television by an Individual. -- Television advertisements purchased by an individual supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the individual and containing at least the following words: 'I am [individual's name], and I sponsored this advertisement opposing/sponsoring [name of candidate] for [name of office].'

(5) All Advertisements on Television. -- In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing person, either in photographic form or through the actual appearance of the disclosing person on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio. --

(1) Candidate Advertisements on Radio. -- Radio advertisements purchased by a candidate or by a candidate campaign committee shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is..") [name of candidate], candidate for [name of office], and this ad was paid for by [name of candidate campaign committee that paid for the advertisement].'

(2) Political Party Advertisements on Radio. -- Radio advertisements purchased by a political party organization supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished")

by [name of political party].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political Action Committee Advertisements on Radio. -- Radio advertisements purchased by a political action committee supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee.' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on Radio by an Individual. -- Radio advertisements purchased by an individual supporting or opposing a specific candidate or candidates shall include a disclosure statement spoken by the individual and containing at least the following words: 'I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me.'

(d) Placement of Disclosure Statement in Television and Radio Advertisements. -- In advertisements on television, a sponsoring candidate or candidate campaign committee, political party organization, political action committee, or individual may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as any visual disclosure required under federal law is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall follow the requirements under federal law.

(e) Choice by Noncandidate Entity of Supporting or Opposing a Candidate. -- In its oral disclosure statement, a sponsoring political party organization, political action committee, or individual shall choose either to identify an advertisement as supporting a specific candidate or opposing a specific candidate.

(f) Legal Remedy. -- Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, or individual whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The court shall award reasonable attorneys' fees to a plaintiff candidate who prevails in an action under this section. The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and

attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to Federal Law. -- Television advertisements by candidates or candidate campaign committees, political party organizations, political action committees, and individuals supporting or opposing a specific candidate or candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with federal disclosure requirements by use of visual legends. The content of those visual legends is specified by federal law. The size of those visual legends is determined by State law that satisfies minimum requirements under federal law. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements of federal law under 47 U.S.C. § 317.

(h) No Additional Liability of Television or Radio Outlets. -- Television or radio outlets shall not be liable under this section for carriage of political advertisements that fails to include the disclosure requirements provided for in this section.

(i) No Criminal Liability. -- Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability for any person.

"**§ 163-278.39B. Definitions.**

As used in this Part:

(1) 'Candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.

(2) 'Candidate campaign committee' means any political committee organized by or under the direction of a candidate.

(3) 'Full-screen' means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(4) 'Print media' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, periodicals, and outdoor advertising facilities.

(5) 'Political action committee' has the same meaning as 'political committee' in G.S. 163-278.6(14), except that 'political action committee' does not include any political party or political party organization.

(6) 'Political party organization' means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) 'Radio' means any aural programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(8) 'Scan line' means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(9) 'Supporting or Opposing' means an advertisement that mentions the name of a candidate and whose purchase constitutes an expenditure or contribution required to be disclosed under this Article.

(10) 'Television' means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(11) 'Unobscured' means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

"**§ 163-278.39C. Scope of disclosure requirements.**

The disclosure requirements of this Part apply to all those candidates or candidate committees, political party organizations, political action committees, and individuals required to file financial disclosure statements in North Carolina pursuant to this Article or pursuant to federal law."

Section 2. G.S. 163-278.16 reads as rewritten:

"**§ 163-278.16. Regulations regarding ~~contributions, expenditures and media advertising.~~ timing of contributions and expenditures.**

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

~~(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless~~

~~(1) It bears the legend or includes the statement: "Paid for by (or Sponsored by)..... (Name of candidate, political committee, referendum committee, individual)";~~

~~(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;~~

~~(3) The sponsor states in the media advertisement its position:~~

~~a. For or against the candidate; or~~

~~b. For or against an opposing candidate~~

~~provided that this subdivision applies only if the media advertisement is made for or against a candidate; and~~

~~(4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.~~

~~The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.~~

~~The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts.~~ "

Section 3. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor."

Section 4. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 5. This act becomes effective January 1, 1998, and applies to all advertisements published 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 this act, 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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 708 PCS Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. ) RAND
(Sen.)

1 moves to amend the bill on page 5, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "AS" AND "THE"

4 THE WORDS "~~$25,000 PLUS~~" "TWENTY-FIVE

5 THOUSAND DOLLARS ($25,000) PLUS".

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19

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____



PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**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

April 22, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 759 - GUILTY BUT MENTALLY ILL - 2**
Senator Cooper

Senate Bill 759 would create the verdict of guilty but mentally ill and provide for the treatment, monitoring, and supervision of persons acquitted for insanity.

## Guilty But Mentally Ill

Section 2 of the bill provides that if a defendant who is charged with 1st degree murder asserts the defense of insanity, the judge shall find the defendant "guilty but mentally ill" if the defendant fails to prove to the jury's satisfaction that the defendant was insane, but proves to the jury's satisfaction that at the time of the offense the defendant had a mental disease or defect that substantially impaired the defendant's ability to conform to the requirements of law. Mental disease or defect does not include voluntary intoxication or abnormalities manifested only by repeated criminal conduct.

Section 1 of the bill provides that a person who commits what is defined as 1st degree murder and is subsequently found "guilty but mentally ill" shall be guilty of 2nd degree murder and punished as a Class B2 felon. This means that rather than being sentenced to death or life imprisonment without parole, the offender who is found guilty but mentally ill, assuming prior record level I, would receive 125-157 months active punishment.

Section 4 of the bill sets out requirements for treatment for defendants found guilty but mentally ill (GBMI). When the defendant is sent to prison, he or she will receive a mental health evaluation

provided for by the Department of Correction. The Department of Correction must then provide treatment consistent with the recommendations and findings of the mental health evaluation. Before the defendant is released from prison, the Department of Correction must evaluate the defendant's mental condition and prepare a suitable community-based treatment plan for implementation upon the defendant's release. The treatment plan is to be prepared jointly by the Department of Correction and the mental health authority serving the geographical area where the defendant plans to reside.

**Changes Applicable To Persons Found Not Guilty By Reason Of Insanity**

Under current law, a person who is found not guilty by reason of insanity is automatically committed to a designated State facility. Unless waived, a hearing is required within 50 days. The defendant bears the burden of proving, by a preponderance of the evidence, that he is no longer has a mental illness or is no longer dangerous to others as defined by law. If the court is not satisfied that the defendant has met the burden, the court orders inpatient commitment of a period not to exceed 90 days; at least 15 days before the end of that period, a hearing must be calendared. If the court again finds that the defendant has not met the burden of proof, the inpatient commitment is continued for a period not to exceed 180 days; another hearing is calendared 15 days before the end of that period. A third or subsequent commitment may be for a period of up to one year. At any hearing, if the court is satisfied that the defendant has met his burden of proof, the court orders the defendant discharged and released.

Senate Bill 759 provides that the court will not discharge an individual who, as a result of medication or hospitalization, is no longer dangerous to others but who, without continued medication or supervised treatment, will suffer disability or deterioration that would result in dangerousness. The bill provides that the court will release such persons only under the condition that they are supervised by a designated area mental health authority or facility and continue to receive treatment and medication. A conditional release order is a commitment order and is subject to the same time limitations as commitment orders. Section 8 of the bill allows the court to revoke a conditional release order and recommit the person if the court finds that the conditions of release have not been fulfilled; that the person is dangerous to others; or that the person suffers from a mental illness that causes him or her to present a substantial risk of serious bodily harm, an imminent threat of physical injury, or a substantial risk of extreme destruction of property. The court retains jurisdiction to revoke a conditional release for as long as continued involuntary treatment is necessary to prevent reoccurrence of the person's mental illness or danger to others.

The bill becomes effective December 1, 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 759

Short Title: Guilty But Mentally Ill-2. (Public)

Sponsors: Senators Cooper; Albertson, Ballantine, Kerr, Kinnaird, Lee, Martin of Guilford, McDaniel, Odom, Rand, and Winner.

Referred to: Judiciary.

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE VERDICT OF GUILTY BUT MENTALLY ILL AND TO PROVIDE FOR THE TREATMENT, MONITORING, AND SUPERVISION OF INSANITY ACQUITTEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that (i) any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without ~~parole.~~ parole, and (ii) any such person who is found guilty but mentally ill under G.S. 14-17.2 shall be guilty of second degree murder and punished as a Class B2 felon. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall

determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

Section 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-17.2. Guilty but mentally ill defined.**

(a) If a defendant charged with murder in the first degree asserts the defense of insanity, the trier of fact shall find the defendant guilty but mentally ill if:

(1) The State proves beyond a reasonable doubt the elements of murder in the first degree;

(2) The defendant fails to prove to the jury's satisfaction that the defendant was insane; and

(3) The defendant proves to the jury's satisfaction that he or she, at the time of the offense, had a mental disease or defect that substantially impaired the defendant's ability to conform his or her conduct to the requirements of law.

(b) 'Mental disease or defect,' as used in this section, does not include:

(1) An abnormality manifested only by repeated criminal or otherwise antisocial conduct; or

(2) Behavior manifested only as a result of voluntary intoxication."

Section 3. The title of Article 80 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 80.

Defendants Found Not Guilty by Reason of ~~Insanity.~~ Insanity and Defendants Found Guilty But Mentally Ill."

Section 4. Article 80 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1323. Treatment for defendants found guilty but mentally ill.**

When a defendant charged with a crime is found guilty but mentally ill under G.S. 14-17.2, the presiding judge shall include in the written commitment order, in addition to that information required by G.S. 15A-1301, an order that the defendant receive a mental health evaluation arranged for or provided by the Department of Correction. The Department of Correction shall make available to the defendant during the period of imprisonment any treatment consistent with the recommendations and findings of the mental health evaluation. The order of the commitment shall require that, before the defendant may be released from a term of imprisonment, the Department of Correction must evaluate the defendant's mental condition and prepare a suitable community-based treatment plan for implementation upon the defendant's release. The treatment plan shall be prepared jointly by the Department of Correction and the area mental health, developmental disabilities, and substance abuse authority serving the geographical area where the defendant plans to

reside. The treatment plan shall be specifically designed to facilitate the return of the defendant to the community as a functioning, self-supporting citizen, and may include intensive supervision, day reporting, monitored medications, and appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, and such other outpatient services that appear beneficial."

Section 5. G.S. 122C-268.1(i) reads as rewritten:

"(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and ~~released.~~ released; provided, however, that the court shall not discharge an individual who, as a result of medication or hospitalization, is no longer dangerous to others, if it can be determined within reasonable medical probability that without continued medication or supervised treatment the respondent will suffer disability or deterioration that would result in dangerousness as defined in G.S. 122C-3(11)b. Such an individual may only be released in accordance with G.S. 122C-276.1(d). If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings."

Section 6. G.S. 122C-271(c) reads as rewritten:

"(c) If the respondent was found not guilty by reason of insanity and has been held in a 24-hour facility pending the court hearing held pursuant to G.S. 122C-268.1, the court may make one of the following dispositions:

(1) If the court finds that the respondent has not proved by a preponderance of the evidence that he no longer has a mental illness or that he is no longer dangerous to others, it shall order inpatient treatment at a 24-hour facility for a period not to exceed 90 days.

(2) If the court finds that the respondent has proven by a preponderance of the evidence that he no longer has a mental illness or that he is no longer dangerous to others, the court shall order the respondent discharged and ~~released.~~ released; provided, however, that the court shall not discharge an individual who is no longer dangerous to others as a result of medication or hospitalization, if it can be determined within reasonable medical probability that without continued medication or supervised treatment the respondent will suffer disability or deterioration that would result in dangerousness as defined in G.S. 122C-3(11)b. Such an individual may only be released in accordance with the provisions for conditional release in G.S. 122C-276.1 and shall remain under commitment for a period not to exceed 90 days."

Section 7. G.S. 122C-276.1 reads as rewritten:

"**§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.**

(a) At least 15 days before the end of any inpatient commitment period or conditional release ordered pursuant to G.S. 122C-268.1, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1), unless the hearing is waived by the respondent.

(b) The proceedings of the rehearing shall be governed by the same procedures provided by G.S. 122C-268.1.

(c) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. ~~If the court is so satisfied, then the court shall order the respondent discharged and released.~~ If the court finds that the respondent has not met his burden of proof, then the court shall order inpatient commitment be continued for a period not to exceed 180 days. If the court finds that the respondent has met his burden of proof, then the court shall order the respondent discharged and released; provided, however, that the court shall not discharge an individual who, as a result of medication or hospitalization, is no longer dangerous to others, if it can be determined within reasonable medical probability that without continued medication or supervised treatment the respondent will suffer disability or deterioration that would result in dangerousness as defined in G.S. 122C-3(11)b. Such an individual may only be conditionally released in accordance with subsections (d) through (f) of this section. The court shall make a written record of the facts that support its findings.

(d) If the court finds that the respondent meets the criteria for discharge by proving by a preponderance of the evidence that he or she is no longer dangerous to others as defined in G.S. 122C-3(11)b., but also finds within a reasonable medical probability that, without continued medication or supervised treatment, the respondent will suffer disability or deterioration that would result in dangerousness as defined in G.S. 122C-3(11)b., the court shall order the respondent conditionally released in accordance with this section. A conditional release order is a commitment order and is subject to the same limitations on periods of time as commitment orders. Before ordering any conditional release, the court shall make findings of fact that the respondent's mental illness can be controlled with proper care, medication, supervision, or treatment if he or she is conditionally released.

(e) If the court orders conditional release of the respondent in accordance with subsection (d) of this section, the court shall, in addition to any other conditions of release, order the respondent to report to an area authority or other facility designated by the Secretary for the treatment and supervision of individuals conditionally released under this section. As a condition of release, the court also shall order the respondent to continue to receive periodic psychiatric or psychological treatment, as prescribed and administered by the designated area authority or facility, and to take any medication prescribed as a part of that treatment. The area authority or other facility designated to treat and supervise the respondent shall monitor and document the respondent's compliance with prescribed treatment.

(f) In order to ensure the safety and welfare of the citizenry of the State and a respondent who is to be conditionally released, the court may permit the facility where the respondent has been committed, or other 24-hour facility designated by the Secretary, to keep the respondent in custody for a period of time not to exceed 30 days in order to permit sufficient time for the attending physician of the facility to prepare recommendations to the court for a suitable community-based treatment program for the respondent. The attending physician shall plan jointly with the area authority or other facility designated to supervise the respondent's treatment. The treatment program shall be specifically designed to facilitate the return of the respondent to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial.

(g) If a respondent who is to be conditionally released will be residing in a county outside the judicial district of the district court ordering conditional release, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court.

~~(d)~~ (h) At least 15 days before the end of any commitment or conditional release period ordered pursuant to ~~subsection~~ subsections (c) or (d) of this section and annually thereafter, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1). The procedures and standards for the rehearing are the same as under this section. No third or subsequent inpatient recommitment order or conditional release order shall be for a period longer than one year."

Section 8. Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-278. Revocation of conditional release.**

(a) The court may order revocation of a conditional release ordered pursuant to G.S. 122C-276.1 if the court finds after hearing evidence that:

(1) The conditions of release have not been fulfilled;

(2) The respondent is dangerous to others; or

(3) Based on the respondent's behavior or condition during the period of conditional release and the respondent's past mental health history, there is a substantial likelihood that the respondent suffers from a mental illness that causes him or her to present:

a. Substantial risk of serious bodily harm to the respondent or others;

b. An imminent threat of physical injury to the respondent or others; or

c. A substantial risk of extreme destruction of property.

(b) The court may retain jurisdiction to revoke a conditional release for as long as continued involuntary treatment is necessary to prevent reoccurrence of the respondent's mental illness and dangerousness.

(c) When the court finds that the conditional release should be revoked, the court shall immediately order the respondent recommited to the custody of the Department, subject to discharge or release only in accordance with the procedures provided in G.S. 122C-276.1."

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, April 22, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **376** Campus Law Enforcement
Sequential Referral: None
Recommended Referral: None

S.B. **402** Debtor Protection/Simple IRAs
Sequential Referral: None
Recommended Referral: None

S.B. **456** Cartways Sunset Off
Sequential Referral: None
Recommended Referral: None

S.B. **571** Controlled Substance/Schedule II
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **708** Stand by Your Ad
Draft Number: PCS 1778
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Sen. Cooper sign

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — Name of Committee

**April 22, 1997** — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Desmond S. Lamb-Williams | NS |
| Doris Greaves | N.C. CWA Political Council |
| Alice Sharpe | State Construction |
| AB Swindell | BI |
| Bill Alexander | NCPBA |
| Lyman Cooper | CSX Corp. |
| Pat Yarn | SCSL/APPCNC |
| Lucinda Pullen | Attorney |
| J. Michael McGuinness | Attorney |
| Christopher E Wiesemann | NCPBA |
| N. R. Burkley | NCPBA |
| James Flowe | N.C. P.B.A. |
| Doug Vaughn | N.C.P.B.A. |
| A. BRUCE BARRETT | N.C. P.B.A |
| RE Padgett | NC PBA |
| DS MARTIN | UNC |
| W. Sam Keith | NCPBA |
| J. Cox | NC PBA |
| Mike Burgess | NCFAC |
| Beth Nielsen | NC AMI |
| Pam Seamans | United Way of NC |
| BR Pleasants | Lt. Gov. office |
| Mac McCorkle | Public Consultant |
| Maurice Axtell | Lt Governor's Office |
| WILL EDGERTON | NHHA/NC |
| Katherine Hay | NC Psychiatric Assoc. |
| Jeanne Winner | S & N's |

# VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 22, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| [illegible] | UCHICL |
| Paul Webb | Glaxo Wellcome, RTP, NC |
| Susan Buchanan | Eastern Research Group, Morrisville NC |
| Roger Johnson | WAKE County AMI |
| Susan Johnson | Wake County AMI |
| Joe Donovan | Wake County Alliance for the Mentally Ill |
| Mary Lowry | Conf. of DA's - Raleigh |
| PERRI MORGAN | NFIB |
| [illegible] | MH/DD/SAS |
| [illegible] | CYPC |
| [illegible] | NCATL |
| [illegible] | NCATL |
| Whitney Haig | DMHDDSAS |
| Mark Botts | Institute of Gov't |
| [illegible] | DMHDDSAS |
| [illegible] | NC Electric Co-ops |
| [illegible] | NCFB |
| [illegible] | NCFB |
| [illegible] | NCMS |
| Alan Miles | Bailey & Dixon LLP |
| [illegible] | NCCM |
| [illegible] | Poyner - Van Allen |
| David Fergell | Hofler, McNamara, Caldwell, McElroy & Witten PA |
| [illegible] | NCHRA |
| [illegible] | ACLU |

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — Name of Committee

**April 22, 1997** — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| J Craig Lunsford | PCMH |
| Peggy Reed | NC Council of Churches |
| Ed Scott | PENC |
| MT Berryhill | GACPD - DOA |
| Leslie Davidson | NCCBF |
| Amanda Dighton | NCATL |
| Leroy Douglas | Berkie Concern Citizen ASSOC |
| Myrna Mills | NASW NC |
| L. Guenther | NC Citizen Action |
| John Rustin | NCFPC |
| Rob Schofield | NCJCDC |
| John A. Leaston | DOA - PKC |
| Dick Taylor | NCAA |
| Bernard Allen | SOS |
| Timothy Kent | AIA-NC |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 24, 1997

The Senate Judiciary Committee met on Thursday, April 24, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Dannelly to explain **Senate Bill 741** - AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 741 for discussion. The motion carried by voice vote.

Senator Dannelly moved to amend the Proposed Committee Substitute on Page 3, Line 14. The motion carried by voice vote. (Amendment attached.)

Senator Odom moved to amend the Proposed Committee Substitute on Page 3, Lines 13-16. The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Ballance was recognized to explain **Senate Bill 451** - 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.

Senator Ballance moved to give the bill a favorable report and re-refer it to the Appropriations Committee. The motion carried by voice vote.

Senator Ballance was recognized to explain **Senate Bill 324** - AN ACT TO PROVIDE THAT A PERSON IS NOT LIABLE UNDER THE CONCEALED HANDGUN LAWS FOR POSTING OR NOT POSTING PREMISES OF WHICH THE PERSON IS IN LEGAL POSSESSION OR CONTROL.

Walker Reagan, Committee Counsel, was recognized to answer questions from the Committee.

Senator Ballance moved to amend the bill on Page 1, Line 13. The motion carried by voice vote. (Amendment attached.)

Senator Winner moved to give the bill a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 325** - AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN ONE YEAR OF RETIREMENT.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Lee was recognized to explain **Senate Bill 862** - AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

Senator Lee moved to adopt a Proposed Committee Substitute for Senate Bill 862 for discussion. The motion carried by voice vote.

Senator Rand moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Rand was recognized to explain **Senate Bill 146** - AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION.

Senator Rand moved to amend the bill on Page 5, Line 9. The motion carried by voice vote. (Amendment attached.)

Senator Odom moved to give the bill a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Odom, acting Chairman, recognized Senator Cooper to explain **Senate Bill 800** - 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.

Chief Judge Gene Arnold and Judge Jack Cozort, of the Court of Appeals, were recognized to speak on the bill.

Senator Cooper moved to give the bill a favorable report. The motion carried by voice vote.

Senator Cooper recognized Senator Odom to explain **Senate Bill 263** - AN ACT TO AMEND THE WORKERS' COMPENSATION ACT SO THAT NONRESIDENT ALIENS RECEIVE COMPENSATION EQUAL TO THAT RECEIVED BY OTHER WORKERS UNDER THE ACT.

Senator Odom moved to amend the bill on Page 2, Line 36. The motion carried by voice vote. (Amendment attached.)

Senator Kerr moved to give the bill a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Hoyle was recognized to explain **Senate Bill 844** - AN ACT TO STRENGTHEN THE OPEN MEETINGS LAW TO REQUIRE ACCOUNTS OF CLOSED MEETINGS, TO PROHIBIT VOTING ON ECONOMIC DEVELOPMENT INCENTIVES IN CLOSED SESSIONS AND TO CLARIFY INFORMATION THAT MUST BE DISCLOSED PUBLICLY ABOUT PROSPECTIVE REAL ESTATE PURCHASES BY PUBLIC BODIES.

Senator Hoyle moved to adopt a Proposed Committee Substitute for Senate Bill 844 for discussion. The motion carried by voice vote.

Senator Hoyle moved to amend the Proposed Committee Substitute on Page 1, Lines 3 through 6. The motion carried by voice vote.

Senator Soles moved to amend the Proposed Committee Substitute on Page 1, Line 13 and Page 1, Line 17. The motion carried by voice vote.

Jim Blackburn, with the Association of County Commissioners, was recognized to speak on the bill.

Senator Kerr moved to amend the Proposed Committee Substitute on Page 1, Line 13. The motion failed on a show-of-hands vote of 8-12.

Senator Albertson moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Winner was recognized to explain **Senate Bill 228** - AN ACT TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

Senator Winner moved to adopt a Proposed Committee Substitute for Senate Bill 228 for discussion. The motion carried by voice vote.

After discussion by the Committee, Senator Cooper asked that the bill be held.

Senator Rand was recognized to explain **Senate Bill 842** - AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATIONS, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS.

Senator Carpenter moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 430** - AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSIONAL OF INDUSTRIAL HYGIENISTS.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 430 for discussion. The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Martin was recognized to explain **Senate Bill 786** - AN ACT TO AMEND THE SUBROGATION RIGHTS REQUIREMENTS FOR THE DIVISION OF VOCATIONAL REHABILITATION TO CONFORM WITH MEDICAID SUBROGATION.

Senator Martin moved to give the bill a favorable report. The motion carried by voice vote.

Senator Dalton was recognized to explain **Senate Bill 384** - AN ACT TO AMEND THE PUBLIC RECORDS LAW TO PROTECT THE IDENTITY OF EMPLOYEES OF FINANCIAL INSTITUTIONS IN THE EVENT OF ROBBERY.

Senator Odom moved to amend the bill on Page 2, Line 4. The motion carried by voice vote. (Amendment attached.)

After discussion by the Committee, Senator Cooper asked that the bill be held.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# APRIL 24, 1997

| | | |
|---|---|---|
| SB 115 | Community Penalties/Record Checks | Gulley |
| SB 116 | Jurisdictional Amount Increase | Gulley |
| SB 117 | Modify Two DMV Definitions | Gulley |
| SB 146 | Clerks of Court on Commissions | Rand |
| SB 228 | Child Abuse Report Penalty | Winner |
| SB 263 | Workers' Comp/Nonresident Aliens | Odom |
| SB 324 | Concealed Handguns/Liability | Ballance |
| SB 325 | Concealed Handgun Exemption | Odom |
| SB 371 | International Comm. Conciliation | Odom |
| SB 372 | Time Limits for Foreign Service | Odom |
| SB 384 | Protect Robbery Witness | Dalton |
| SB 430 | Industrial Hygienists | Odom |
| SB 451 | Compensate Erroneously Convicted | Ballance |
| SB 551 | Amend Offer of Judgment Rule | Cooper |
| SB 540 | Standardize Law Enforcement Discipline | Miller |
| SB 561 | Campus Police/Concealed Handguns | Odom |
| SB 573 | Ballot Access Changes | Gulley |
| SB 663 | Absentee Voting Changes | Rucho |
| SB 716 | Unemployment Bene./Severence Pay | Perdue |
| SB 741 | Charlotte Photo Citations | Dannelly |

| | | |
|---|---|---|
| SB 759 | Guilty But Mentally Ill/2 | Cooper |
| SB 764 | Workers Comp. Medical Care | Kerr |
| SB 786 | Voc. Rehab. Subrogation Change | W. Martin |
| SB 800 | Judicial Standards Exec. Secretary | Cooper |
| SB 842 | Architectural License Exemption | Rand |
| SB 844 | Strengthen Open Government | Hoyle |
| SB 862 | UNC Contracts Negotiations | Lee |
| SB 893 | Regulating Charitable Bingo | Weinstein |

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April 24, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 741 - Charlotte Photo Enforcement**
Senator Dannelly

Senate Bill 741 is a local bill which would amend Article 15 (Streets, Traffic and Parking) of Chapter 160A ( Cities and Towns) to allow the City of Charlotte to adopt an ordinance regarding the use of photographic images to enforce speeding and traffic signal violations.

The bill defines a traffic control photographic system and sets out requirements for the municipal ordinance. The driver is held responsible for a violation unless the owner furnishes evidence that the vehicle was in the control of another person or provides an affidavit stating that the vehicle had been stolen or was otherwise being used without the owner's permission. A violation detected by a traffic control photographic system is a noncriminal violation which is subject to a $50 civil penalty, and for which no drivers license points are assessed. When a violation is detected, a citation is issued to the owner by personal service or by certified mail. If the owner fails to pay the civil penalty or to otherwise respond within the specified time period, the owner will be subject to a $100 civil penalty. The city is required to institute an administrative hearing to review contested cases. The city is authorized to establish procedures for collection of the penalties and may enforce the penalties by civil action.

The city ordinance authorized by this bill would not preclude traditional enforcement of speeding and traffic offenses by law enforcement officers. The bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 741

Short Title: Charlotte Photo Citations. (Local)

Sponsors: Senators Dannelly; Albertson, Ballance, Gulley, Jenkins, Jordan, Kerr, Martin of Guilford, Odom, Perdue, Rucho, Soles, and Winner.

Referred to: Judiciary.

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. This act will permit the City of Charlotte to employ traffic control photographic systems for traffic enforcement.

Section 2. This act applies to the City of Charlotte only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S741-CSRV-002
PROPOSED COMMITTEE SUBSTITUTE
S741
THIS IS A DRAFT 23-APR-97 21:11:57
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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) 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 non-judicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(5) Nothing in this section shall prevent or preclude enforcement of G.S. 20-141, 20-141.1, 20-143, and 20-158 by sworn law enforcement officers as a criminal offense."

Section 2. This act applies to the City of Charlotte only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S741-CSRV-002
PROPOSED COMMITTEE SUBSTITUTE
S741
THIS IS A DRAFT 23-APR-97 21:11:57
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Short Title: Charlotte Photo Enforcement. (Local)

Sponsors:

Referred to:

April 7, 1997

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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 non-judicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(5) Nothing in this section shall prevent or preclude enforcement of G.S. 20-141, 20-141.1, 20-143, and 20-158 by sworn law enforcement officers as a criminal offense."

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**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, April 24, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **741** Charlotte Photo Citations

| | |
|---|---|
| Draft Number: | PCS 6664 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

**North Carolina General Assembly**
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April 17, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 451 - COMPENSATE ERRONEOUSLY CONVICTED**
Senator Ballance

Senate Bill 451 amends the law concerning individuals seeking monetary 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 that such petition be presented to the Industrial Commission rather than 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. The total recovery allowed under the statute is increased from $5,000 to $150,000.

Senate Bill 451 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 451*

Short Title: Compensate Erroneously Convicted. (Public)

Sponsors: Senator Ballance.

Referred to: Judiciary.

March 24, 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.

# 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]

[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill

**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 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

S 1

SENATE BILL 324

Short Title: Concealed Handguns/Liability. (Public)

Sponsors: Senators Ballance; Odom and Shaw of Cumberland.

Referred to: Judiciary.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON IS NOT LIABLE UNDER THE CONCEALED HANDGUN LAWS FOR POSTING OR NOT POSTING PREMISES OF WHICH THE PERSON IS IN LEGAL POSSESSION OR CONTROL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-415.20 reads as rewritten:

"**§ 14-415.20. No liability of ~~sheriff.~~ sheriff; certain other persons.**

(a) A sheriff who issues or refuses to issue a permit to carry a concealed handgun under this Article shall not incur any civil or criminal liability as the result of the performance of the sheriff's duties under this Article.

(b) A person who is in legal possession or control of premises shall not incur civil or criminal liability under this Article for either allowing or prohibiting another person to carry a concealed handgun on the premises in accordance with this Article."

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

**North Carolina General Assembly**
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April 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 324 - CONCEALED HANDGUNS/LIABILITY** - Senator Odom

Senate Bill 324 would clarify the law by providing that the person in legal possession or control of premises has no liability for allowing or prohibiting another person to carry a concealed handgun on the premises in accordance with the Concealed Handgun Permit Act.

G.S. 14-415.11(c) prohibits the carrying of a concealed handgun by a concealed handgun permit holder on any premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. G.s. 14-415.11 also prohibits the carrying of a concealed handgun by a permit holder in other places as well. (Copy of G.S. 14-415.11 is attached.)

This bill states that a person does not have liability if they should fail to prevent a person from carrying a concealed handgun on their property and a person is injured by the handgun, nor is the person liable if another person is injured on the premises where a concealed handgun is prohibited, if the injury might have been prevented if concealed handguns were allowed.

The bill becomes effective when it becomes law.

S324-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 14-415.11. Permit to carry concealed handgun; scope of permit.**

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of four years from the date of issuance.

(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or any other premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of the loss or destruction of the permit. A person may obtain a duplicate permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee.

(1995, c. 398, s. 1; c. 507, s. 22.1(c); c. 509, s. 135.3(e).)

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**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-24-97

S. B. No. 324 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by inserting between the words "either" and "allowing" the following: "posting or not posting a sign"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 325 - CONCEALED HANDGUN EXEMPTION** - Senator Odom

Senate Bill 325 would exempt certain current and recently retired law enforcement officers from the training requirement in order to be eligible for a conceal handgun permit.

Section 1 of the bill adds a new section to the Concealed Handgun law to exempt qualified sworn law enforcement officers and qualified former sworn law enforcement officers from having to take and successfully complete an approved firearms safety and training course that involves actual firing of handguns and instruction in the laws of North Carolina governing the carrying of a concealed handgun and the use of deadly force.

Section 2 adds two new definitions for "qualified former sworn law enforcement officer" and "qualified sworn law enforcement officer". **A qualified former officer** is a person who has retired from a North Carolina State or local law enforcement agency for reasons other than mental disability, who has been retired a year or less and who immediately before retirement was a qualified law enforcement officer in NC, has nonforfeitable rights to benefits as a retired law enforcement officer, and who is not prohibited by State or federal law from receiving a firearm. **A qualified current officer** is one would is currently employed by a local or State law enforcement agency who is authorized to carry a handgun while on duty, is not subject to disciplinary action which could prevent the carrying of a handgun, and who meets the requirements of the agency regarding handguns.

Section 3 adds a provision to the permit form statute to require information on the law enforcement status of the applicant for a concealed handgun permit.

The bill becomes effective December 1, 1997.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 325*

Short Title: Concealed Handgun Exemption. (Public)

Sponsors: Senators Odom; Albertson, Allran, Ballance, Ballantine, Blust, Carpenter, Carrington, Clark, Dalton, Dannelly, Foxx, Gulley, Horton, Hoyle, Jenkins, Kinnaird, Ledbetter, Lee, Lucas, Martin of Guilford, McDaniel, Miller, Perdue, Phillips, Plyler, Reeves, Rucho, Soles, Webster, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN ONE YEAR OF RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.12A. Firearms safety and training course exemption for qualified sworn law enforcement officers.**

A person who is a qualified sworn law enforcement officer or a qualified former sworn law enforcement officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course.

Section 2. G.S. 14-415.10 is amended by adding the following subdivisions:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a local or State agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer

a year or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local or State agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the agency as a law enforcement officer.

c. The individual is not prohibited by State or federal law from receiving a firearm.

(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a local or State agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 3. G.S. 14-415.14(a) reads as rewritten:

"(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, law enforcement status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit."

Section 4. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 862

Short Title: UNC Contracts Negotiations. (Public)

Sponsors: Senators Lee, Winner, and Garwood.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"**§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) With regard to buildings at The University of North Carolina, the Board shall conduct the fee negotiations and supervise the letting of all contracts for the design, construction, or renovation for the following:

(1) Open-end design agreements.

(2) Individual projects if the project costs three hundred thousand dollars ($300,000) or less and is designed under the terms of an open-end design agreement.

(3) Minor individual capital improvements projects costing five hundred thousand dollars ($500,000) or less.

(b) The Board may delegate its authority under subsection (a) of this section to the affected constituent institution if the institution is qualified under university procedures approved by the State Building Commission.

(c) All duties and responsibilities of the Department of Administration set forth in G.S. 143-341(3) are delegated to the Board for capital improvements projects of The University of North Carolina costing one million dollars ($1,000,000) or less.

The Board of Governors shall determine, in consultation with the State Building Commission and the Director of the Budget, the extent to which this authority may be further delegated to the constituent institutions."

Section 2. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract. Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of

delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract

may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

**"§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the

benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this ~~subdivision.~~ subdivision, except as provided in G.S. 116-31.11.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

e. With respect to capital improvements projects of The University of North Carolina, all duties and responsibilities of the Department set forth in subdivision (3) of this section, are delegated to the Board of Governors of The University of North Carolina to the extent provided by G.S. 116-31.11(c)."

Section 6. G.S. 143-64.32 reads as rewritten:

"**§ 143-64.32. Written exemption of particular contracts.**

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of ~~the act~~ this Article in the case of:

(a) ~~proposed~~ Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars ($30,000), or

(b) ~~other~~ Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefor and the circumstances attendant thereto."

Section 7. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain State Capital Improvement Projects.**

State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article. Further, with respect to capital improvement projects for The University of North Carolina, including its constituent institutions and the North Carolina School of Science and Mathematics, individual projects having estimated expenditures of public money of three hundred thousand dollars ($300,000) or less are exempt from the provisions of this Article provided that the architectural, engineering, and surveying services to be rendered are included under the provisions of an open-end design agreement that has been publicly announced."

Section 8. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 9. The Office of State Budget and Management shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11; recommendations regarding the continuance of the delegated powers, their continuance with modifications, their expansion, or their discontinuance. The Office of State Budget and Management shall report its findings and recommendations to

the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

Section 10. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 11. This act is effective when it becomes law. G.S. 116-31.11(c), as enacted by Section 1 of this act, shall expire July 1, 2001.

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April 23, 1997

**TO:** Senate Judiciary I Committee

**FROM:** Terrence D. Sullivan

**RE:** **Senate Bill 862** (Proposed Committee Substitute S862-CSLHK-1), **TO PROVIDE GREATER FLEXIBILITY TO UNC IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY UNC AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT UNC** introduced originally by Senator Lee and others.

**Section 1** would add two new sections to G.S. Chapter 116, Article 1, Part 3,UNC Constituent Institutions. The *proposed §116.31.10* would require that the Board of Governors (Board) establish an expenditure benchmark and a bid value benchmark for a special responsibility constituent institution (so designated by an express finding by the Board that the institution has management staff and controls to allow it to administer additional delegated management authority (G.S. 116-30.1)). The Board, consulting with the Governor and the Director of the Division of Purchase and Contract, would set the benchmarks at no greater than $250,000, considering the institution's overall capabilities (including staff resources, purchasing compliance reviews and audit reports).

The proposed *§116.31.11* would permit the Board, with regard to buildings, to conduct fee negotiations and letting of contracts involving design, construction or renovation of open-end design agreements, individual projects, designed under an open-end design agreement, costing $300,000 or less; or minor capital improvement projects costing $500,000 or less. The Board could delegate this authority to the constituent institution if qualified under procedures approved by the State Building Commission. Duties of the Department of Administration and its Office of State Construction relating to architecture and engineering (G.S. 143-341(3)) and adjustment and resolution of construction claims(G.S. 143-135.3) are delegated to the Board for capital projects costing $1,000,000 or less (this authority expires on July 1, 2001). This authority could be further delegated to the constituent institutions.

**Section 2** would amend G.S.143-52 to direct the Secretary of Administration to include printing among those items to be examined for consolidation of estimates of services. Where expenditure in excess of the expenditure benchmark would be involved, bids would be solicited. Electronic means would be added to that of newspaper advertisement as a method for soliciting bids. The

tabulation of the of the bid and the bidder shall become a public record in accordance with the rules of the Secretary of Administration.

**Section 3** would amend *G.S. 143-53(a)* relating to the Secretary of Administration's duty of prescribing the routine for securing bids on items under the value benchmark to detail the procedure for delegation of this authority.

**Section 4** would amend *G.S. 143-53.1* to increase on July 1, 1997 the benchmark for competitive bids from $10,000 to $25,000.

**Section 5** is a conforming change (see Section 1).

**Section 6** is a clarifying change.

**Section 7** would amend *G.S. 143-64.34* to raise from $50,000 to $100,000 the estimate cost of capital improvement projects, under the jurisdiction of the State Building Commission, and thus exempt from the provisions of Purchases and Contracts Article. UNC capital improvement projects and individual projects having an estimated public expenditure of $300,000 or less are similarly excluded if the architectural, engineering, and surveying services are included under an open-end agreement publicly announced.

**Section 8** is a conforming change(see Section 1).

**Section 9** amends *G.S. 143-3.3* to allow payroll deduction for UNC employees for discretionary privileges including parking, athletic passes, use of recreational facilities, concert admissions, and access to other institutional events and facilities.

**Sections 10 and 11** requires the Office of State Budget and Management to evaluate the process and results of the delegations authorized under this and to report its by April 15, 2001.

**Section 12** would make the bill effective when it becomes law., except for the expiration of §116-31.11 would be repealed as of July 1, 2001 as noted at Section 1above..

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 862
Proposed Committee Substitute S862-CSLHK-1

Short Title: UNC Contracts Negotiations. (Public)

Sponsors:

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"**§ 116-31.10. Powers of Board regarding certain purchasing contracts.**

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars ($250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of

the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) With regard to buildings at The University of North Carolina, the Board shall conduct the fee negotiations and supervise the letting of all contracts for the design, construction, or renovation for the following:

(1) Open-end design agreements.

(2) Individual projects if the project costs three hundred thousand dollars ($300,000) or less and is designed under the terms of an open-end design agreement.

(3) Minor individual capital improvements projects costing five hundred thousand dollars ($500,000) or less.

(b) The Board may delegate its authority under subsection (a) of this section to the affected constituent institution if the institution is qualified under university procedures approved by the State Building Commission.

(c) All duties and responsibilities of the Department of Administration and the Director of the Office of State Construction of the Department of Administration set forth respectively in G.S. 143-341(3) and G.S. 143-135.3 are delegated to the Board for capital improvements projects of The University of North Carolina costing one million dollars ($1,000,000) or less.

The Board of Governors shall determine, in consultation with the State Building Commission and the Director of the Budget, the extent to which this authority may be further delegated to the constituent institutions."

Section 2. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely

distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any

contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1.~~ 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments,

institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

(3) Defining contractual services for the purposes of G.S. ~~143-49(3).~~ 143-49(3) and G.S. 143-49(5).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, ~~1990,~~ 1997, the ~~expenditure benchmark~~ procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars ($10,000);~~ no more than twenty-five thousand dollars ($25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as

of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992,~~ 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars ($35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of:

1. All State buildings; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129

prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this ~~subdivision.~~ subdivision, except as provided in G.S. 116-31.11.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

e. With respect to capital improvements projects of The University of North Carolina, all duties and responsibilities of the Department set forth in subdivision (3) of this section, are delegated to the Board of Governors of The University of North Carolina to the extent provided by G.S. 116-31.11(c)."

Section 6. G.S. 143-64.32 reads as rewritten:

"§ 143-64.32. Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of ~~the act~~ this Article in the case of:

(a) ~~proposed~~ Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars ($30,000), or

(b) ~~other~~ Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefor and the circumstances attendant thereto."

Section 7. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain State Capital Improvement Projects.

State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article. Further, with respect to capital improvement projects for The University of North Carolina, including its constituent institutions and the North Carolina School of Science and Mathematics, individual projects having estimated expenditures of public money of three hundred thousand dollars ($300,000) or less are exempt from the provisions of this Article provided that the architectural, engineering, and surveying services to be rendered are included under the provisions of an open-end design agreement that has been publicly announced."

Section 8. G.S. 143-135.3 is amended by adding a new subsection to read:

"(f) With respect to capital improvement projects of The University of North Carolina costing one million dollars ($1,000,000) or less, all duties and responsibilities of the Department of Administration set forth in this section are

delegated to the Board of Governors of The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. The Office of State Budget and Management shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11; recommendations regarding the continuance of the delegated powers, their continuance with modifications, their expansion, or their discontinuance. The Office of State Budget and Management shall report its findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

Section 11. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget

and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 12. This act is effective when it becomes law. G.S. 116-31.11(c), as enacted by Section 1 of this act, shall expire July 1, 2001.

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April 24, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 146 - CLERKS OF COURT ON COMMISSIONS**
Senators Rand and Odom

Senate Bill 146 would add clerks of court to various boards and commissions as follows:

**Section 1** of the bill adds the President of the Association of Clerks of Superior Court of N.C., or his designee, to the Sentencing and Policy Advisory Commission. This increases the membership to 29.

**Section 2** of the bill adds a clerk of superior court, appointed by the Chief Justice of the N.C. Supreme Court, to the State Criminal Justice Partnership Advisory Board. The Board acts as an advisory body to the Secretary of Correction with regard to community-based corrections programs under the Criminal Justice Partnership Act. The appointment is for a term of three years, and increases the membership to 22.

**Section 3** of the bill adds a clerk of superior court, appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, as a voting member of the Governor's Crime Commission. This increases the number of voting members to 35.

The bill would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
**Senate Bill 146**

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

S146-ARV-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill on page 5, line 9, by rewriting that line to read:
"of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 146

Short Title: Clerks of Court on Commissions. (Public)

Sponsors: Senators Rand and Odom.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE ADVISORY BOARD, AND THE GOVERNOR'S CRIME COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 164-37 reads as rewritten:

"**§ 164-37. Membership; chairman; meetings; quorum.**

The Commission shall consist of ~~28~~ 29 members as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;

(2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;

(3) The Secretary of Correction or his designee;

(4) The Secretary of Crime Control and Public Safety or his designee;

(5) The Chairman of the Parole Commission, or his designee;

(6) The President of the Conference of Superior Court Judges or his designee;

(7) The President of the District Court Judges Association or his designee;

(8) The President of the North Carolina Sheriff's Association or his designee;

(9) The President of the North Carolina Association of Chiefs of Police or his designee;

(10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
(11) One member to be appointed by the Lieutenant Governor;
(12) Three members of the House of Representatives, to be appointed by the Speaker of the House;
(13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;
(14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;
(15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
(16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
(17) The President of the Conference of District Attorneys or his designee;
(18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
(19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
(20) The President of the North Carolina Association of County Commissioners or his designee;
(21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
(22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
(23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
(24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.
(25) The President of the Association of Clerks of Superior Court of North Carolina, or his designee.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of

the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum."

Section 2. G.S. 143B-273.6 reads as rewritten:

"**§ 143B-273.6. State Criminal Justice Partnership Advisory Board; members; terms; chairperson.**

(a) There is created the State Criminal Justice Partnership Advisory Board. The State Board shall act as an advisory body to the Secretary with regards to this Article. The State Board shall consist of ~~21~~ 22 members as follows:

(1) A member of the Senate.
(2) A member of the House of Representatives.
(3) A judge of the Superior Court.
(4) A judge of the district court.
(5) A district attorney.
(6) A criminal defense attorney.
(7) A county sheriff.
(8) A chief of a city police department.
(9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.
(10) A representative of an existing community-based corrections program.
(11) A member of the public who has been the victim of a crime.
(12) A rehabilitated ex-offender.
(13) A member of the business community.
(14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.
(15) A victim service provider.
(16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.
(17) A clerk of superior court.

(b) The membership of the State Board shall be selected as follows:

(1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, the members selected from each of the service areas.
(2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, the victim service provider.
(3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior

court, the criminal defense attorney, the representative of an existing community-based corrections program.

(4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, one member of the general public.

(5) The Speaker of the House shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms, one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) of subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as chairman and one member as vice-chairman.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the chairman. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a State-County Criminal Justice Partnership grant or which has received a grant and which is the subject of an inquiry or vote by a grant oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. 'Interest' in a grant applicant or grantee shall mean a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member,

director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses."

Section 3. G.S. 143B-478 reads as rewritten:

"**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.**

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 34 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Youth Services of the Department of Human Resources, the Administrator for Juvenile Services of the Administrative Office of the Courts, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts,

the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Paroles, the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be

disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
**Senate Bill 146**

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

S146-ARV-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator Raab

moves to amend the bill on page 5, line 9, by rewriting that line to read:
"of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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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Terrence D. Sullivan, Director
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April 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 263-WORKERS' COMPENSATION/NONRESIDENT ALIENS** - Senator Odom

Senate Bill 263 amends the law for the payment of death benefits under Workers' Compensation to treat payments to the survivors of nonresident aliens the same as residents.

Under current law, workers' compensation benefits paid to the survivors of a non-resident alien residing in another country are limited to certain beneficiaries and maybe limited to an amount of one-half the present value of all future payments due and paid in a lump sum. This bill eliminates any difference in benefits paid to survivors of workers' covered by workers' compensation based residence status.

This bill becomes effective when it becomes law and applies to awards of compensation entered on or after that date.

S263-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

# SENATE BILL 263

Short Title: Workers' Comp./Nonresident Aliens. (Public)

Sponsors: Senator Odom.

Referred to: Judiciary.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT SO THAT NONRESIDENT ALIENS RECEIVE COMPENSATION EQUAL TO THAT RECEIVED BY OTHER WORKERS UNDER THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-38 reads as rewritten:

"**§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.**

If death results proximately from a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars ($30.00), per week, and burial expenses not exceeding two thousand dollars ($2,000), to the person or persons entitled thereto as follows:

(1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the exclusion of all other persons. If there be only one person wholly dependent, then that person shall receive the entire compensation payable.

(2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.

(3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as 'next of kin' in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing **in loco parentis** to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of 400 weeks from the date of the death of the employee; provided, however, after said 400-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States ~~or Canada,~~ shall be the same in amounts as provided for ~~residents, except that dependents in any foreign country except Canada shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to the surviving father or mother whom the employee has supported, either in whole or in part, for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier shall commute all future installments of compensation to be paid to such aliens to their present value and payment of one~~

~~half of such commuted amount to such aliens shall fully acquit the employer and the insurance carrier.~~ residents."

Section 2. This act is effective when it becomes law and applies to all awards for compensation under Chapter 97 of the General Statutes entered on or after that date.

EMBAJADA DE MÉXICO No. WAS-00121

Washington, D.C., April 7, 1997.

To the Honorable
Senator Fountain Odom,
North Carolina Senate,
Room 300-B,
Legislative Office,
Raleigh, N. C. 27601-2808

Dear Senator Odom:

I just learned that you have recently introduced the Senate Bill HB 263 to amend the North Carolina's Workers' Compensation Act. Your amendment proposes to remove the unjust provisions in the present law that, with the exception of Canadian citizens, reduces the compensation payable to non-resident workers.

The provision which your amendment proposes to eliminate is clearly against the principle of equality stated by the Constitution of the United States of America and as far as I know this provision was originally included in a sample legislative scheme that was used as a guide by many State Legislatures when they created their Workmen's Compensation Commission. North Caroline is one of the few remaining States that has not removed this patently discriminatory language from its Statute.

I am enclosing a copy of a Petition for Writ of Certiorari to the U. S. Supreme Court that was filed by the League of United Latin American Citizens (LULAC) and the Mexican American Legal Defense Fund (MALDEF). The Writt challenged the constitutionality of a similar law in Georgia. This letter and its enclosures will be also sent to you by Federal Express.

On behalf of the Mexican workers and of my own, I want to assure you of our deep gratitude.

Sincerely yours,

Salvador Cassian-Santos,
Consul General of Mexico

cc: Mr. G. Patrick Hunter III,
Attorney at Law,
290 Meacham St. Suite 201,
Charlotte, N.,C. 28203

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE 4-24-97

S. B. No. ~~SB 263~~ 263 Amendment No. _____

(to be filled in by Principal Clerk)

Rep. )
Sen. ) Odom

moves to amend the bill on page _____, line _____

by _____

See attached

SIGNED Odom

ADOPTED _____ FAILED _____ TABLED _____

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

PROPOSED COMPROMISE ON S 263 - WORKERS' COMP/NONRESIDENT ALIENS

Beginning on Page 2, Line 36 of the bill (which is where the changes to the statute begin) the bill would read:

"Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving ~~wife~~ spouse and child or children, or if there be no surviving ~~wife~~ spouse or child or children, to the surviving father or ~~mother whom the employee has supported, either in whole or in part, for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier shall commute all future installments of compensation to be paid to such aliens to their present value and payment of one half of such commuted amount to such aliens shall fully acquit the employer and the insurance carrier.~~ mother."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 844

Short Title: Strengthen Open Government. (Public)

Sponsors: Senators Hoyle, Cooper; Forrester and Perdue.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE OPEN MEETINGS LAW TO REQUIRE ACCOUNTS OF CLOSED MEETINGS, TO PROHIBIT VOTING ON ECONOMIC DEVELOPMENT INCENTIVES IN CLOSED SESSIONS AND TO CLARIFY INFORMATION THAT MUST BE DISCLOSED PUBLICLY ABOUT PROSPECTIVE REAL ESTATE PURCHASES BY PUBLIC BODIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep an account of the closed session in a written narrative form such that a person not in attendance would have a reasonable understanding of what transpired, including a record of positions taken by public officials during discussion by the public body. Such accounts, at the option of the public body, may be in the form of sound or video recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

Section 2. G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as

permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. No public body shall formally or informally extend or offer, or permit anyone to extend or offer on behalf of the public body, an inducement, incentive, commitment or consideration that has economic value, and that is financed in whole or in part by public funds, except pursuant to a vote duly taken and recorded in an open session.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract. Provided, however, that if a public body considers the acquisition of an interest in real property, the following information shall be disclosed in the next open session following the closed session: the location of the property; the name(s) of the current property owner(s); the proposed or potential uses of the property; and any proposal or offer from the potential seller.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct."

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

**North Carolina General Assembly**
**Legislative Services Office**

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April 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 844 - STRENGTHEN OPEN GOVERNMENT** - Senator Hoyle.

The Proposed Committee Substitute for Senate Bill 844 would amend the Open Meetings Law by requiring more detailed minutes or recordings of closed sessions and by requiring that offers of economic incentives must be voted on in open session.

Section 1 of the bill amends G.S. 143-318.10(e) by requiring that an account of a closed session must be made in a written narrative form to the extent that a person not in attendance would have a reasonable understanding of what transpired including a record of positions taken by public officials. The bill allows as an option that this account may be in the form of a sound or video recording. These accounts would be treated the same as minutes of a closed session and would be public records that may be withheld from public inspection so long as public inspection would frustrate the purpose for a closed session.

Section 2 amends G.S. 143-318.11(a)(4) which permits a closed session by a public body to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. This bill would prohibit a public body from formally or informally extending or offering, or permitting another to extend or offer, an inducement, incentive, commitment or consideration that has economic value and is financed in whole or part by public funds, except pursuant to a vote taken and recorded in open session.

This bill becomes effective when it becomes law.

S844-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 143-318.10. All official meetings of public bodies open to the public.**

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

(1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p).)

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 844
Proposed Committee Substitute S844-PCSA737

Short Title: Strengthen Open Government. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE OPEN MEETINGS LAW TO REQUIRE ACCOUNTS OF CLOSED MEETINGS, TO PROHIBIT VOTING ON ECONOMIC DEVELOPMENT INCENTIVES IN CLOSED SESSIONS AND TO CLARIFY INFORMATION THAT MUST BE DISCLOSED PUBLICLY ABOUT PROSPECTIVE REAL ESTATE PURCHASES BY PUBLIC BODIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep an account of the closed session in a written narrative form such that a person not in attendance would have a reasonable understanding of what transpired, including a record of positions taken by public officials during discussion by the public body. Such accounts, at the option of the public body, may be in the form of sound or video recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

Section 2. G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. No public body shall formally or informally extend or offer, or permit anyone to extend or offer on behalf of the public body, an inducement, incentive, commitment or consideration that has economic value, and that is financed in whole or in part by public funds, except pursuant to a vote duly taken and recorded in an open session.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a

complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct."

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
**Senate Bill 844**

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

S844-ARU-001 Page 1 of __

Date 4-24 ,1997

Comm. Sub. [YES]
Amends Title [YES]
PCS S844-PCSA737

Senator

1 moves to amend the bill on page 1, lines 3 through 6,
2 by rewriting the lines to read:
3 "ACCOUNTS OF CLOSED MEETINGS AND TO PROHIBIT VOTING ON ECONOMIC
4 DEVELOPMENT INCENTIVES IN CLOSED SESSIONS."

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. 844 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) SOLES
Sen. )

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by DELETING THE WORDS "WRITTEN NARRATIVE"; AND

ON PAGE 1, LINE 17

BY INSERTING BETWEEN THE WORDS "OF" AND "SOUND" THE WORDS "5 WRITTEN NARRATIVES OR".

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 4-24-97

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

COMMITTEE SUBSTITUTE 844

Rep. )
) _____
Sen. )

moves to amend the bill on page ~~2~~, line 8 THROUGH ~~21~~

( ) WHICH CHANGES THE TITLE

by DELETING THE ~~LINES~~ AND RENUMBERING THE REMAINING ~~SECTIONS~~ ACCORDINGLY.

PAGE 1, LINE 13

BY DELETING THE WORD "SESSION," AND SUBSTITUTING THE WORD "SESSION HELD PURSUANT TO GS 143-318.11(a)(4),"

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 228*

Short Title: Child Abuse/No Report Misdem. (Public)

Sponsors: Senators Winner; Allran, Cooper, and Martin of Guilford.

Referred to: Judiciary.

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.**

Any person or institution who 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. Any person or institution

required by this section to report child abuse, neglect, or dependency or a child's death due to suspected maltreatment, who knowingly and willfully fails to make the report, or who knowingly and willfully prevents another from making the report, shall be guilty of a Class 3 misdemeanor.

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) 733-7044

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April 22, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 228 - CHILD ABUSE/NO REPORT MISDEMEANOR**
**Proposed Committee Substitute**
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. The proposed committee substitute for 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

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 152 (=Senate Bill 228), First Edition

**SHORT TITLE:** Child Abuse/No Report Misdemeanor

**SPONSOR(S):** Rep Easterling, Adams, Alexander, Baddour, Clary, Cunningham, Goodwin, H Hunter, Insko Jarrell, Moore, Morris, Nosley, Nye, Smith, Wainwright, Warner, Wright and Yongue. Senator Winner

### FISCAL IMPACT

**Yes ( )** **No ( )** **No Estimate Available ( x)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| **EXPENDITURES** | | | | | |
| **POSITIONS:** | | | | | |

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:** Judicial Branch

**EFFECTIVE DATE:** When it becomes law

**BILL SUMMARY:** **H 152. CHILD ABUSE REPORT PENALTY.** *TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.* Amends GS 7A-543 (which requires any person with cause to suspect that a juvenile is abused, neglected, or dependent or has died as a result of maltreatment to report the case to the department of social services) to add a provision that knowing and willful failure to make a required report or knowing and willful prevention of another from making a report is a class 3 misdemeanor.

**ASSUMPTIONS AND METHODOLOGY**: Current law requires anyone who has cause to suspect a child is abused, neglected or dependent to report the case to the Department of Social Services but does not specify a penalty for failure to report. This bill specifies that anyone knowingly and willfully fails to report is guilty of a Class 3 Misdemeanor.

The Sentencing Commission predicts this bill would have no significant impact on the prison population (since the penalty is a misdemeanor) and only a small impact on county jails.

The Judicial Branch feels that this bill would have a fiscal impact on the Judicial Branch due to an increased number of misdemeanor cases. However, they are not able to provide a specific estimate of the impact.

It is difficult to project the number of abuse cases that are not currently being reported and the number of failures to report that would be discovered and prosecuted. The number of child abuse/neglect/dependency cases that were reported (57,907) and the number prosecuted (3,553) last year are known. The majority (68.5%) of the reports were unsubstantiated. Also, it is estimated that 2/3$^{rd}$ of child abuse cases are never reported. Using last year's number of substantiated cases as a guide there could be 36,482 unreported cases each year. If the abuse itself is not detected there is unlikely to be a charge for failure to report.

Another approach is to look at the number of reported substantiated cases (18,241). In some of these cases there may be individuals who should have reported the case but did not and may face prosecution. These cases are more likely to receive attention where there is enough evidence to bring criminal charges against the abusers, a much smaller number.

There is also a possible impact on County Departments of Social Services in two areas. First of all, more people may be spurred to report both substantiated and unsubstantiated cases, potentially increasing investigative workloads. Second, in cases where a failure to report is detected, Child Protective workers may be involved in tracking the case through the court system.

In summary, there is indication that this bill will result in some increase in the number of misdemeanor cases. Whether the number is significant is impossible to predict. Each new misdemeanor case typically requires 15-30 minutes time in District Court.

**TECHNICAL CONSIDERATIONS**: None

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY**: Elisa Wolper
**APPROVED BY**: Tom Covington **TomC**
**DATE**: March 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

S228-CSRV-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 228
**THIS IS A DRAFT 15-APR-97 11:38:55**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 842

Short Title: Architectural License Exemption. (Public)

Sponsors: Senators Rand; and Foxx.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT PERSONS PERFORMING CERTAIN ALTERATIONS, REMODELING, AND RENOVATIONS OF EXISTING BUILDINGS OR STRUCTURES FROM THE ARCHITECTURAL LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 83A-13(c)(5) reads as rewritten:

"(5) Alteration, ~~remodeling~~ remodeling, or renovation of an existing building ~~which~~ that is exempt under this section, or alteration, remodeling, or renovation of an existing building or building site ~~which~~ that does not alter or affect the ~~structural system of the building;~~ load on the building's mechanical, electrical, or life safety systems, change the live or dead load on the building's structural system, or change the building's access or exit pattern."

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

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April 24, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 842 - ARCHITECTURAL LICENSE EXEMPTION**
Senator Rand

Senate Bill 842 provides that Chapter 83A (Architects) shall not be construed to require an architectural license for the preparation, sale, or furnishing of plans, or for the supervision of construction pursuant to those plans, where the project involved is for the renovation of an existing structure as described in the bill. A copy of the full text of the statute to be amended by the bill is on the reverse side of this memorandum.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 83A-13. Exemptions.**

(a) Nothing in this Chapter shall be construed to prevent the practice of general contracting under the provisions of Article 1 of Chapter 87, or the practice by any person who is qualified under law as a "registered professional engineer" of such architectural work as is incidental to engineering projects or utilities, or the practice of any other profession under the applicable licensure provisions of the General Statutes.

(b) Nothing in this Chapter shall be construed to prevent a duly licensed general contractor, professional engineer or architect, acting individually or in combination thereof, from participating in a "Design/Build" undertaking including the preparation of plans and/or specifications and entering individual or collective agreements with the owner in order to meet the owner's requirements for pre-determined costs and unified control in the design and construction of a project, and for the method of compensation for the design and construction services rendered; provided, however, that nothing herein shall be construed so as to allow the performance of any such services or any division thereof by one who is not duly licensed to perform such service or services in accordance with applicable licensure provisions of the General Statutes; provided further, that full disclosure is made in writing to the owner as to the duties and responsibilities of each of the participating parties in such agreements; and, provided further, nothing in this Chapter shall prevent the administration by any of the said licensees of construction contracts and related services or combination of services in connection with the construction of buildings.

(c) Nothing in this Chapter shall be construed to require an architectural license for the preparation, sale, or furnishing of plans, specifications and related data, or for the supervision of construction pursuant thereto, where the building, buildings, or project involved is in one of the following categories:

(1) A family residence, up to eight units attached with grade level exit, which is not a part of or physically connected with any other buildings or residential units;

(2) A building upon any farm for the use of any farmer, unless the building is of such nature and intended for such use as to substantially involve the health or safety of the public;

(3) An institutional or commercial building if it does not have a total value exceeding ninety thousand dollars ($90,000);

(4) An institutional or commercial building if the total building area does not exceed 2,500 square feet in gross floor area;

(5) Alteration, remodeling or renovation of an existing building which is exempt under this section, or alteration, remodeling, or renovation of an existing building or building site which does not alter or affect the structural system of the building;

(6) The preparation and use of details and shop drawings, assembly or erection drawings, or graphic descriptions utilized to detail or illustrate a portion of the work required to construct the project in accordance with the plans and specifications prepared or to be prepared under the requirements or exemptions of this Chapter.

(d) Nothing in this Chapter shall be construed to prevent any individual from making plans or data for buildings for himself.

(e) Plans and specifications prepared by persons or corporations under these exemptions shall bear the signature and address of such person or corporate officer.

(1979, c. 871, s. 1.)

*Mildred Dalton Cox*
*Honorary Consul of France*
*Charlotte Country Day School*
*1440 Carmel Road*
*Charlotte, North Carolina 28226*
*Tel: (704) 362-7282*
*Fax: (704) 362-7324*

RECEIVED
APR 17

April 14, 1997

The Honorable T. LaFontine Odom, Sr.
North Carolina Senate
Room 300 - B
Legislative Office Building
Raleigh, North Carolina 27601-2808

Dear Fountain:

Patrick Hunter, a Charlotte attorney, has sent me a letter explaining that under current North Carolina law, the Worker's Compensation Act obtains a provision that would permit insurance companies to pay only one half of the usual benefit amount to foreign workers who are killed during their employment. His letter states that you have introduced a bill (HB 263) which would delete this provision.

On behalf of the French citizens who work in North Carolina, I would like to support House Bill 263. French investment is very important to our State. If the current bill remains unchanged, it could hurt the French presence in North Carolina. Thank you for your concern for the foreign workers who are contributing to the economic well-being of our State.

Sincerely,

Millie Cox

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 430

Short Title: Industrial Hygienists. (Public)

Sponsors: Senators Odom; Cochrane, Cooper, Lucas, Reeves, and Shaw of Cumberland.

Referred to: Judiciary.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Industrial Hygiene.

"**§ 90-515. Definitions.**

The following definitions apply in this Article:

(1) 'American Board of Industrial Hygiene'. -- A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.

(2) 'Certified Industrial Hygienist (CIH)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).

(3) 'Industrial Hygiene'. -- The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or

significant discomfort and inefficiency among workers and the general public.

(4) 'Industrial Hygienist'. -- A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these contaminants and stressors, or to reduce the level of human exposure to them.

(5) 'Industrial Hygienist in Training (IHIT)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT).

"**§ 90-516. Unlawful acts.**

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, perform activities of a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, perform activities of an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1, and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of said title."

Section 2. This act becomes effective January 1, 1998.

**North Carolina General Assembly**
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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 430 - INDUSTRIAL HYGIENISTS** - Senator Odom

The Proposed Committee Substitute for Senate Bill 430 would make it a Class 2 misdemeanor for a person to hold him or herself out as a certified industrial hygienist unless they were certified by the American Board of Industrial Hygiene. The bill would also authorize injunctive relief to restrain a continuing violation of these provisions.

The bill prohibits any person from practicing as a Certified Industrial Hygienist or Industrial Hygienist in Training, or to advertise as such, unless the person is certified by the Board. The bill defines what an industrial hygiene is, and who is covered as an industrial hygienist, certified industrial hygienist, and an industrial hygienist in training.

The bill does not create any new licensing or certification board and no State agency would need to enforce this law.

The bill provides that a violation of this new law would constitute a Class 2 misdemeanor and also authorizes the court to issue a restraining order against further illegal use of the title.

The bill also makes clear that nothing in this act restricts the practice of engineering by professional engineers, nor does it permit a certified industrial hygienist to practice engineering without being licensed as a professional engineer.

The bill would become effective December 1, 1997 and would apply to violations which occur on or after that date.

S430-SMRU-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S430-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 430
THIS IS A DRAFT 21-APR-97 19:08:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Industrial Hygienists. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Industrial Hygiene.

"§ 90-515. Definitions.

The following definitions apply in this Article:

(1) 'American Board of Industrial Hygiene'. -- A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.

(2) 'Certified Industrial Hygienist (CIH)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).

(3) 'Industrial Hygiene'. -- The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or significant discomfort and inefficiency among workers and the general public.

(4) 'Industrial Hygienist'. -- A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these contaminants and stressors, or to reduce the level of human exposure to them.

(5) 'Industrial Hygienist in Training (IHIT)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT).

"**§ 90-516. Unlawful acts.**

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this Article shall be punished as a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for injunctive relief to restrain a person who has violated this Article from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought under this subsection, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable harm.

(e) The venue for actions brought under this Article is the superior court of any county in which the illegal or unlawful acts are alleged to have been committed or in the county where the defendant resides.

(f) Nothing in this Article shall be construed as authorizing a person certified in accordance with this Article to engage in the practice of engineering, nor to restrict or otherwise affect the rights of any person licensed to practice engineering under Chapter 89C of the General Statutes; provided, however, that no person shall use the title 'certified industrial hygienist' unless the person has complied with the provisions of this Article."

Section 2. This act becomes effective December 1, 1997 and applies to violations which occur on or after that date.

**North Carolina General Assembly**
**Legislative Services Office**

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April 24, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 786 - VOC. REHAB. SUBROGATION CHANGE**
Senator Martin of Guilford

Senate Bill 786 amends the subrogation rights requirements for the Division of Vocational Rehabilitation. The bill eliminates the priority listing in the current statute, and requires that an attorney retained by a beneficiary of vocational rehabilitation assistance distribute to the Division, from the proceeds obtained on behalf of the beneficiary from a third party by settlement or judgment based on injury or death, the amount of assistance paid by the Division to the beneficiary. The amount to be paid is to be prorated with claims of persons having medical subrogation rights or medical liens against the amount of settlement, judgment, or recovery. The amount paid to the Division may not exceed one-third of the gross amount of the settlement, judgment, or recovery.

The bill is effective when it becomes law and applies to claims filed on or after July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 786

Short Title: Voc. Rehab. Subrogation Change/AB. (Public)

Sponsors: Senators Martin of Guilford; and Cooper.

Referred to: Judiciary.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SUBROGATION RIGHTS REQUIREMENTS FOR THE DIVISION OF VOCATIONAL REHABILITATION TO CONFORM WITH MEDICAID SUBROGATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-547(a) reads as rewritten:

"(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or his personal representative, his heirs, or the administrator or executor of his estate, against any ~~person; provided, however, that any~~ person. Any attorney retained by the beneficiary of the assistance ~~shall~~ shall, out of the proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Division the amount of assistance paid by the Division on behalf of or to the beneficiary, as prorated with the claims of those persons having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Division shall not exceed one-third of the gross amount obtained or recovered. ~~be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death:~~

~~(1) First to the payment of any court costs taxed by the judgment;~~

~~(2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but~~

~~this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;~~

~~(3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; and~~

~~(4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.~~

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient."

Section 2. This act is effective when it becomes law and applies to claims filed on or after July 1, 1997.

**North Carolina General Assembly**
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April 24, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 384 - PROTECT ROBBERY WITNESS**
Senators Dalton and Soles

Senate Bill 384 amends the public records law regarding criminal investigations. Under current law, records of criminal investigations or records of criminal intelligence information compiled by public law enforcement agencies are not public records. However, unless otherwise prohibited by law, the name, sex, age, and address of a complaining witness is a public record.

G.S. 132-1.4(d) provides that the name or address of a complaining witness may be temporarily withheld if release of the information is reasonably likely to pose a threat to the health or safety of the complaining witness. Senate Bill 384 would provide that in the event of a robbery of a financial institution, the financial institution will be considered to be the complaining witness. The sex, age, and address of any individual employee of the institution would not be a public record.

The bill would become effective when it becomes law, and would apply to robberies occurring on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 384

Short Title: Protect Robbery Witness. (Public)

Sponsors: Senators Dalton, Soles; Allran, Ballance, Horton, Miller, Reeves, and Weinstein.

Referred to: Judiciary.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW TO PROTECT THE IDENTITY OF EMPLOYEES OF FINANCIAL INSTITUTIONS IN THE EVENT OF ROBBERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-1.4(d) reads as rewritten:

"(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. However, for purposes of this section, in the event of the robbery of a financial institution as defined in G.S. 53B-2(2), the financial institution shall be considered to be the complaining witness and the sex, age, and address of any individual employee of that institution is not a public record within the meaning of G.S. 132-1.

Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought 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."

Section 2. This act is effective when it becomes law and applies to robberies occurring on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-24-97

S. B. No. 384 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

moves to amend the bill on page 2, line 4

( ) WHICH CHANGES THE TITLE

by inserting after the period the following:

"This act shall expire on July 1, 1999."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Monday, April 28, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **263** Workers' Comp./Nonresident Aliens
Draft Number: PCS 2779
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **324** Concealed Handguns/Liability
Draft Number: PCS 7780
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **430** Industrial Hygienists
Draft Number: PCS 6665
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **844** Strengthen Open Government
Draft Number: PCS 7778
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **862** UNC Contract Negotiations
Draft Number: PCS 2735
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Sen. Cooper sign

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 29, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **325** Concealed Handgun Exemption
Sequential Referral: None
Recommended Referral: None

S.B. **451** Compensate Erroneously Convicted
Sequential Referral: Appropriations
Recommended Referral: None

S.B. **786** Vocational Rehabilitation Subrogation Change
Sequential Referral: None
Recommended Referral: None

S.B. **800** Judicial Standards Exec. Secretary
Sequential Referral: None
Recommended Referral: None

S.B. **842** Architectural License Exemption
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 5

Committee Clerk Comment: Will take to Sen. Cooper

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 29, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **764** Workers Compensation Medical Care

| | |
|---|---|
| Draft Number: | PCS 8686 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

S.B. **896** Legal Representation of Corporations

| | |
|---|---|
| Draft Number: | PCS 4592 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — Name of Committee

**April 24, 1997** — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| [signature] | NCBA |
| [signature] | Duke |
| Bill Harraza | NCBA |
| [signature] | North Carolina Bankers Assn. |
| Paul Stock | NC Bankers Assn. |
| Bob Schofield | NCJCDC |
| Teri Saylor | NCPA |
| David Atkinson | DOS |
| Polly Williams | NC Equity |
| Jim Kent | NC Conference of Retired Actors |
| [signature] | " " |
| Sarah Buchanan | Eastern Research Group. |
| Paul Webb | Glaxo Wellcome |
| Joe McKleer | Industrial Hygienist |
| Dona Cope | NC Dept. of Labor |
| [signature] | NCATL |
| THOMAS G. BEATTIE | GRNC |
| James O. Smith | UNC |
| [signature] | UNC |
| Henry Holmes | UNC |
| Will Hayes | Grass Roots North Carolina |
| Mike Concannon | Grass Roots North Carolina GRNC/FFE |
| Paul Valone | Grass Roots North Carolina GRNC/FFE |
| Dennis Fusaro | Gun Owners of America |
| Tim Kent | American Institute of Architects |
| Kathleen Hansinger | NC Brd of Architecture |

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 4-24-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Noel Allen | NC Bd of Architecture |
| Katie Barnett | Dept. of Admin. |
| Martha Glass | DOA |
| Gene Demers | NC Committee on Publication for Christian Science |
| [illegible] | citizen |
| Lori Ann Harris | SHGRG |
| R. Vansoy | NCPBA |
| W. Sam Keith | NCPBA |
| David Clegg | ESC |
| T.S. Whitaker | ESC |
| Randy Jones | City of Charlotte |
| Boyd Cansler | " " |
| Alice Sharpe | State Construction Office |
| Amy Jo Bain | Smith Anderson |
| Shirley Perkins | — |
| Karen Wolf | [illegible] |
| Lalo Rubert | OSE |
| Jeff Finch | NCPBA |
| James Yarbrough | NCPBA |
| Mona Mumaker | Pearson & Associates |
| Cam Cover | Brooks Pierce McLendon Humphrey Leonard |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Whitney Oberg | DMHDDSAS |
| John Baggett | DMHDDSAS |
| David Ferrell | Hafer, McNamara, Caldwell, McElroy & Cutler P.A. |
| Jackie Stalnaker | DHR – Voc. Rehab. |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 29, 1997

The Senate Judiciary Committee met on Tuesday, April 29, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Rucho to explain **Senate Bill 663** - AN ACT TO AMEND THE ABSENTEE VOTING TO ALLOW NO EXCUSE ABSENTEE VOTING AND TO ALLOW COUNTY BOARDS OF ELECTIONS THE OPTION OF ADDING ADDITIONAL SITES FOR EARLY VOTING.

Senator Rucho moved to adopt a Proposed Committee Substitute for Senate Bill 663 for discussion. The motion carried by voice vote.

Senator Rand moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Rand was recognized to explain **Senate Bill 896** - AN ACT TO AMEND THE LAW GOVERNING THE PRACTICE OF LAW BY ATTORNEYS REPRESENTING CORPORATIONS.

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 896 for discussion. The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Rand was recognized to explain **Senate Bill 897** - AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC SURVEILLANCE LAW.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Winner was recognized to continue the discussion of the Proposed Committee Substitute for **Senate Bill 228** - AN ACT TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE which was adopted at the previous meeting.

Senator Soles moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Kerr was recognized to explain **Senate Bill 764** - AN ACT TO ALLOW AN EMPLOYER AND ITS REPRESENTATIVES TO CONTACT AN EMPLOYEE'S TREATING PHYSICIAN AS NECESSARY TO EXERCISE THE EMPLOYER'S RIGHT TO DIRECT MEDICAL TREATMENT AND TO OBTAIN INFORMATION REGARDING MEDICAL TREATMENT.

Senator Kerr moved to adopt a Proposed Committee Substitute for Senate Bill 764 for discussion. The motion carried by voice vote.

Allen Metes, with the American Insurance Association, was recognized to speak on the bill.

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Soles, acting Chairman, recognized Senator Cooper to explain **Senate Bill 799** - AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

Senator Cooper moved to adopt a Proposed Committee Substitute for Senate Bill 799 for discussion. The motion carried by voice vote.

Senator Cooper moved to amend the Proposed Committee Substitute on Page 1, Line 10 and on Page 2, Lines 18 and 19. The motion carried by voice vote.

Jim Blackburn, with the Association of County Commissioners, Andy Romanet, with the League of Municipalities and Harriet Dial, with the Association of Educators were recognized to speak on the bill.

After further discussion by the Committee, Senator Cooper asked that a new Proposed Committee Substitute be written and brought back to the Committee on April 30th.

Senator Bill Martin was recognized to explain **Senate Bill 864** - 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.

Senator Hoyle moved to give the bill a favorable report. The motion carried by voice vote.

Senator Ballance was recognized to explain **Senate Bill 855** - 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.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Page was recognized to explain **Senate Bill 825** - AN ACT RELATING TO FUNDRAISING IN SESSION.

Senator Rucho moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

After discussion by the Committee, Senator Page asked that the bill be held.

Senator Odom was recognized to explain **Senate Bill 561** - AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED CAMPUS POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES.

Tim McDowell, with the Association of Independent Colleges and Universities, was recognized to speak on the bill.

Senator Hoyle moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 371** - AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 371 for discussion. The motion carried by voice vote.

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Line 20 by removing the word "respectively". The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 372** - AN ACT TO REMOVE, 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.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 372 for discussion. The motion carried by voice vote.

Senator Soles moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Miller was recognized to explain **Senate Bill 540** - AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

Kevin West, Vice President of the Police Benevolent Association, Homer Berkley, Chief of Police in Taylor Town, N. C. and Eddie Caldwell with the N. C. Sheriff's Association and the N. C. Law Enforcement Association, were recognized to speak on the bill.

After discussion by the Committee, Senator Miller requested that it be held.

There being no further business, the meeting adjourned at 11:00 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# APRIL 29, 1997

| | | |
|---|---|---|
| SB 62 | Annexation/Municipal Services | Hartsell |
| SB 148 | Motor Vehicle Occupant Restraints | Winner |
| SB 228 | Child Abuse Report Penalty | Winner |
| SB 371 | International Comm. Conciliation | Odom |
| SB 372 | Time Limits for Foreign Service | Odom |
| SB 530 | Roller Skating Rink Liability | Rand |
| SB 540 | Standardize Law Enforcement Discipline | Miller |
| SB 551 | Amend Offer of Judgment Rule | Cooper |
| SB 554 | Paternity/Parental Support | Hartsell |
| SB 561 | Campus Police/Concealed Handguns | Odom |
| SB 573 | Ballot Access Changes | Gulley |
| SB 663 | Absentee Voting Changes | Rucho |
| SB 716 | Unemployment Bene/Severence Pay | Perdue |
| SB 725 | EEOC Deferral Agency/Proceedings | Miller |
| SB 744 | Grandparents' Child Support | Rand |
| SB 759 | Guilty But Mentally Ill/2 | Cooper |
| SB 764 | Workers Comp. Medical Care | Kerr |
| SB 795 | Product Liability Limitation | Winner |
| SB 799 | Discipline Disclosure Act | Cooper |
| SB 825 | Contributions in Session | Page |
| SB 855 | Court Information Remote Access | Ballance |

| | | |
|---|---|---|
| SB 864 | Update and Revise Trademark Act | McDaniel |
| SB 893 | Regulating Charitable Bingo | Weinstein |
| SB 896 | Legal Representation/Corporations | Rand |
| SB 897 | Amend Elec. Surveillance Law | Rand |
| SB 902 | Supreme Court Sessions | Rand |
| SB 923 | Commercial Realtor Lien Act | Odom |
| SB 943 | Medicaid False Claims Act | Rand |
| SB 948 | Multiple Commissions/Campus Police | Gulley |
| SB 1024 | Sheriffs' Commission Amendments | Cooper |
| SB 1028 | Subcontractor Claims Against Owners | Miller |
| SB 1061 | Honesty in Evidence | Ballantine |
| SB 1068 | Housing Authority Amendments | Jenkins |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 663

Short Title: Absentee Voting Changes. (Public)

Sponsors: Senators Rucho; Ballantine, Cooper, Dannelly, Gulley, Hartsell, Horton, Odom, Rand, Reeves, Shaw of Guilford, and Winner.

Referred to: Judiciary.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ABSENTEE VOTING TO ALLOW NO EXCUSE ABSENTEE VOTING AND TO ALLOW COUNTY BOARDS OF ELECTIONS THE OPTION OF ADDING ADDITIONAL SITES FOR EARLY VOTING.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 163 of the General Statutes reads as rewritten:

"ARTICLE 20.

"Absentee Ballot.

**"§ 163-226. Who may vote an absentee ballot.**

(a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

(1) The voter expects not to be ~~absent from the county in which he is registered during the entire period that the polls are open~~ present at the voting place to vote in person on the day of the specified election in which the voter desires to vote; or

(2) The voter is unable to be present at the voting place to vote in person on the day of the specified election in which the voter desires to vote because of the voter's sickness or other physical ~~disability;~~ disability where such illness or other physical disability

arises after 5:00 p.m. on the Tuesday preceding the election but before 12:00 noon on the day of the specified election.

~~(3) The voter is incarcerated, whether in the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of the voter's residence in any election, specified herein, in which the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;~~

~~(3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or~~

~~(4) The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and the voter's assigned duties on the day of the election will cause the voter to be unable to be present at the voting place to vote in person and provided such employee has the application witnessed by the chairman of the county board of elections.~~

(b) Absentee Ballots; Exceptions. -- Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections.

(c) As used in this Subchapter, unless the context clearly requires otherwise, the term 'election' includes a general, primary, second primary, runoff, bond election, referenda, or special election.

**"§ 163-226.1. Absentee voting in primary.**

A qualified voter may vote by absentee ballot in a ~~statewide or countywide~~ partisan primary provided ~~he~~ the qualified voter is affiliated, at the time ~~he~~ the qualified voter makes application for absentee ballots, with the political party in whose primary ~~he~~ the qualified voter wishes to ~~vote.~~ vote, except that an unaffiliated voter may vote in a party primary if permitted under G.S. 163-116. The official registration records of the county in which the voter is registered shall be proof of whether ~~he~~ the qualified voter is affiliated with a political party and of the party, if any, with which ~~he~~ the qualified voter is affiliated.

**"§ 163-226.2. Absentee voting in municipal elections.**

Absentee voting by qualified voters residing in a municipality shall be in accordance with the authorization specified in G.S. 163-302.

**"§ 163-226.3. Certain acts declared felonies.**

(a) Any person who shall, in connection with absentee voting in any ~~primary, general, municipal or special~~ election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative as defined in G.S. 163-227(c)(4), or the voter's legal guardian;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote ~~his~~ that voter's absentee ballot outside of the voting booth or private room provided to ~~him~~ the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance in getting to and from the voting booth or private room and in preparing and marking ~~his~~ that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative as defined in G.S. 163-227(c)(4) or legal guardian, to make application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or legal guardian, ~~or officer authorized to administer oaths acting pursuant to G.S. 163-231(a)(1),~~ to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into ~~his~~ that voter's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian;

(7) Except as provided in subsections (1), (2), (3), and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist ~~him~~ the voter in marking ~~his~~ that voter's absentee ballot, to be in the voter's

presence when a voter votes an absentee ballot, or to observe the voter mark ~~his~~ that voter's absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit such affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a).

**"§ 163-227. State Board to prescribe form of application for absentee ballots; county to secure.**

(a) Applications for Absentee Ballots Generally. -- ~~A~~ An eligible voter ~~falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2~~ may apply for absentee ballots not earlier than 50 days prior to the ~~statewide, county or municipal~~ election in which ~~he~~ that eligible voter seeks to vote and not later than 5:00 P.M. on the Tuesday before that ~~election.~~ election, except that applications under G.S. 163-227.2 shall be governed by that section and applications under G.S. 163-226(a)(2) may be made not earlier than 5:00 p.m. on the Tuesday preceding the election and not later than 12:00 noon on election day. Subject to all other provisions contained in this Article, a voter applying for an absentee ~~ballot~~ ballot except under G.S. 163-227.2 shall complete the standard application form to be secured by the county board of elections, as designed and prescribed by the State Board of Elections. The form shall be printed on the container-return envelope transmitted to the voter along with the ballots. The form shall allow reporting of a change of name as provided by G.S. 163-82.16(d). The form shall contain lines to be checked off by each of the kinds of voters specified below:

(1) A voter ~~expecting to be absent from the county of his residence all day~~ expecting not to be present at the voting place to vote in person on the day of the specified election, or who is otherwise entitled to cast an absentee ~~ballot under G.S. 163-226(a)(3), 163-226(a)(3a) or 163-226(a)(4).~~ ballot. (G.S. 163-226(a)(1)).

(2) A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of ~~his~~ that voter's sickness or other physical disability occurring after 5:00 p.m. on the Tuesday preceding the election but before ~~5:00 P.M.~~ 12:00 noon on the day ~~prior to the date~~ of the specified election. (G.S. 163-226(a)(2)).

(3) Repealed by Session Laws 1991, c. 727, s. 6.1.

~~(4) A voter expecting to be absent from the county or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.~~

(b) Types of Applications; Instructions. --

(1) Expected ~~Absence from County~~ Not to Be Present at the Voting Place on Election Day, or other Permitted Reason. -- A voter expected to ~~be absent from the county~~ not be present at the voting place in which registered during the entire period that the polls will be open on primary or general election ~~day, or a near relative, or verifiable legal guardian,~~ day shall make written ~~application~~ request for absentee ballots to the ~~chairman of the~~ board of elections of the county in which the voter is registered not ~~earlier than 50 days nor~~ later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon ~~a copy~~ the container-return envelope which shall be furnished the voter or a near relative by the ~~chairman of the~~ county board of elections. ~~The provisions of this subdivision also apply with respect to persons entitled to vote by absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a), or 163-226(a)(4).~~

~~The applicant shall sign his application personally, or it shall be signed by a near relative or verifiable legal guardian.~~ The application shall be signed by the voter personally. ~~The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.~~

(2) Absence for Sickness or Physical Disability Occurring After 5:00 P.M. on the Tuesday Prior to the Election but ~~before 5:00 P.M.~~ Before 12:00 Noon on the ~~day prior to~~ Day of the Primary or General Election. -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of ~~his~~ that voter's sickness or other physical ~~disability,~~ disability occurring after 5:00 p.m. on the Tuesday preceding the election but before 12:00 noon on the day of the date of the specified election ~~or his near relative or verifiable legal guardian,~~ shall make written ~~application~~ request for absentee ballots to the ~~chairman of the~~ board of elections of the county in which the voter is registered not earlier than ~~50 days~~ 5:00 p.m. on the Tuesday nor later than ~~5:00 P.M.~~ 12:00 noon on the day ~~before~~ of the election. The application shall be submitted in the form set out in this subdivision upon ~~a copy~~ the container-return envelope which shall be furnished the voter ~~or a near relative or verifiable legal guardian~~ by the ~~chairman of the~~ county board of elections.

The application shall be signed by the voter ~~personally, or it shall be signed by a near relative or verifiable legal guardian.~~ personally. ~~The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.~~

~~The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative or verifiable legal guardian to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.~~

(3) Repealed by Session Laws 1991, c. 727, s. 6.1.

(4) 'One-Stop' Voting Procedure, in Office of the County Board of Elections. -- A voter falling in the category specified in G.S. 163-227.2 may execute an application form and proceed to vote ~~his~~ that voter's absentee ballot in the office of the county board of elections only. The application shall be on a separate form prescribed by the State Board of Elections.

(c) Application Forms Issued by ~~Chairman of~~ County Board of Elections. -- The ~~chairman of the~~ county board of elections shall be sole custodian of all absentee ballot application forms, ~~but he,~~ and the chairman, a member, the secretary of the board ~~and~~ or the director of elections or an employee of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to ~~a person authorized to sign such an application~~ an eligible voter under the provisions of this section:

(1) The chairman, ~~secretary or~~ member, director of elections or an employee of the board of elections may deliver the form to a voter personally ~~or to his near relative or verifiable legal guardian~~ at the office of the county board of elections for the voter's own use; or

(2) The chairman, ~~secretary or~~ member, director of elections or an employee of the board of elections may mail the form to a voter for ~~his~~ that voter's own use upon receipt of a written request from the ~~voter or his near relative or verifiable legal guardian.~~ voter.

At the time ~~he issues~~ of issuance of an application form, the chairman, ~~secretary or~~ member, director of elections or an employee of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, ~~secretary or~~ member, director of elections or an employee of the board of elections shall insert the name of the voter and the number assigned ~~his~~ that voter's application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. ~~If the application is requested by the voter's near relative, or verifiable legal guardian, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.~~

The chairman, ~~secretary or~~ member, director of elections or an employee of the board of elections shall issue only one application form to a voter ~~or his near relative or verifiable legal guardian~~ unless a form previously issued is returned to the

chairman, ~~secretary or~~ member, secretary, director of elections or an employee of the board of elections and marked 'Void' by ~~him.~~ that person or unless the applicant certifies that the application has been lost or never received. In such a situation, the chairman, ~~secretary or~~ member, secretary, director of elections or an employee of the board of elections may issue another application form to the voter ~~or a near relative or verifiable legal guardian,~~ but ~~he~~ shall retain the voided application form or the certificate in the board's records. ~~If the application is requested by the voter's near relative or verifiable legal guardian, the chairman, secretary or supervisor of elections shall write the name of the near relative or verifiable legal guardian on the index of near relatives or verifiable legal guardians, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.~~

(3) ~~Applications or Absentee Ballots~~ Requests for Application Transmitted by Mail or in Person. -- ~~An~~ A request for application for absentee ballots shall be made and signed only by the voter desiring to use them ~~or the voter's near relative or verifiable legal guardian~~ and shall be valid only when transmitted to the ~~chairman or supervisor of elections of the~~ county board of elections by ~~mail~~ mail, by fax, or delivered in person by the voter or ~~his~~ the voter's near relative or legal verifiable guardian.

(4) Who Is Authorized to Request Applications for Absentee Ballots. -- A voter may personally request an application for absentee ~~ballots or may cause such request to be made through a near relative or verifiable legal guardian.~~ ballots. A near relative of the person may request for that person an application under G.S. 163-230.1(d). For the purpose of this Article, 'near relative' means spouse, brother, sister, parent, grandparent, child, or grandchild.

(5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. ~~No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.~~

~~(6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:~~

~~'This application is issued for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, 19 _____.' The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.~~

(7) ~~No applications shall be issued earlier than 50 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the~~ The county board of elections ~~from receiving~~ may receive written requests for applications earlier than 50 days prior to the election but ~~such applications~~ applications and ballots shall not be mailed or issued to the voter in person earlier than 50 days prior to the ~~election.~~ election, except as provided in G.S. 163-227.2.

(8) ~~Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or verifiable legal guardian authorized to make application.~~ No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein.

**"§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary.**

A voter applying for an absentee ballot for a primary election who will be ~~absent from the county of his residence~~ eligible to vote under this Article on the day of the primary and second primary shall be permitted by the county board of elections to indicate such fact on ~~his~~ that voter's application and such voter shall automatically be issued an application and absentee ballot for the second primary if one is called. The county board of elections shall consider such indication a separate request for application for the second primary and, at the proper time, shall enter such voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the ~~primary~~ primary, does not have a continuing application for the calendar year under G.S. 163-227(c)(8), or who failed to apply for a second primary ballot at the time of application for a first primary ballot may apply for absentee ballots for a second primary not earlier than the day a second primary is called and not later than ~~5:00 P.M. on the Tuesday prior to the date on which the second primary is held.~~ the date and time provided by G.S. 163-227.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section.

**"§ 163-227.2. Alternate procedures for requesting application for absentee ballot; 'one-stop' voting procedure in board office.**

(a) A person expecting to ~~be absent from the county~~ not be present at the polling place in which ~~he~~ that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized ~~or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4)~~ may request an application for absentee ballots, complete the application, ~~receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered~~ and vote under the provisions of this section.

(b) Not earlier than the ~~twenty-fourth day~~ first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which ~~he~~ a voter seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the director of elections of the board, or an employee of the board of elections, authorized by the board, furnish ~~him~~ the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, director of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, director of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and shall furnish the voter with the ballots to which the application for absentee ballots ~~applies; and shall furnish the voter with a container-return envelope.~~ applies. The voter thereupon shall ~~comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b).~~ vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of ~~elections.~~ elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. ~~For the purposes of this section only, the~~ The application under this subsection shall be signed in the presence of the chairman, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, ~~member~~ member, employee, or director of elections of the board shall keep the voter's application for absentee ballots ~~and the sealed container-return envelope~~ in a safe place, separate and apart from other applications and container-return envelopes. ~~At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be~~

~~handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article.~~ If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at ~~his~~ that voter's residence address ~~or~~ and at the address shown in the application for absentee ballots; and the board ~~chairman~~ shall ~~retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.~~ enter a challenge under G.S. 163-89.

(e) The voter shall vote ~~his~~ that voter's absentee ballot in a voting booth in the office of the county board of elections and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote ~~his~~ that voter's absentee ballot in that room. ~~The voting booth shall be in the office of the county board of elections.~~ If the voter needs assistance in getting to and from the voting booth and in preparing and marking ~~his~~ that voter's ballots or if ~~he~~ the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian shall be entitled to assist the voter. The ballot shall be a paper ballot or a voting system in which a paper ballot is counted by computer or mechanical device. The ballot in any case shall have the ballot number on it in accordance with G.S. 163-230(3)a. After the voter casts the ballot, the voter shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with rules adopted by the State Board of Elections, which shall include verifying that no additional ballots have been placed in the box or system. If a direct record voting system with retrievable ballots is approved by the State Board of Elections, it may be used for ballots cast under this section under rules approved by the State Board of Elections.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time.

(f1) Notwithstanding any other provision of this section, a county board of elections may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Such sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county

board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted.

(f2) Unless the voter is personally known by an election official present at the board of elections office or voting site, a voter prior to being issued a ballot shall show one of the following types of identification at the time of applying for an absentee ballot under subsection (c) or (f1) of this section:

(1) A voter registration card issued under G.S. 163-82.8 in a county which issues such cards;
(2) A drivers license;
(3) A special identification card issued under G.S. 20-37.7;
(4) A passport;
(5) An identification card issued by the U.S. Department of Defense;
(6) A social security card and one other type of identification showing the name and a picture of the voter; or
(7) Other identification acceptable to a precinct official in the precinct."

"**§ 163-227.3. Date by which absentee ballots must be available for voting.**

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence.

(b) Second Primary. -- The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined.

"**§ 163-228. Register of absentee ballot applications and ballots issued; a public record.**

The State Board of Elections shall design an official register and provide a source of supply thereof from which the ~~chairman of the~~ county board of elections in each county of the State shall purchase a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, as long as the information required by this Article to be in the register has a hard copy printed out each business day, or a supplement printed out each day of new information.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 50 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

"**§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets.**

(a) Absentee Ballot Form. -- In accordance with the provisions of G.S. 163-230(3), persons entitled to vote by absentee ballot shall be furnished with ~~regular~~ official ballots. ~~Separate or distinctly marked absentee ballots shall not be used.~~

(b) Container-Return Envelope. -- In time for use not later than 50 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the ~~chairman of the~~ county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

(1) ~~On one side~~ There shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

'Certification of Election Official

The undersigned election official does by ~~his~~ that election official's hand and seal certify that ..... is a registered and qualified voter of ..... Precinct ~~#~~ ..... and ~~has made~~ is making proper application to vote under the Absentee Ballot Law of North Carolina for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, ~~19~~ _____.

.....(Seal)
Chairman-Member'

(2) ~~On the other side~~ There shall be printed the return address of the ~~chairman of the~~ county board of elections and the following certificate:

'Certificate of Absentee or Sick Voter
State of.....
County of.....

I, ....., do certify that I am a resident and registered voter in ..... precinct, ..... County, North Carolina; that on the day of an election, ....., .... (check whichever of the following statements is correct.)

[ ] I will ~~be absent from the county in which I reside~~ not be present at the polling place in which I am registered during the entire time the polls will be open on election day.

[ ] Due to sickness or physical disability, occurring after 5:00 p.m. on the Tuesday before the election but before

12:00 noon on the day of the election, ~~or incarceration as a misdemeanant,~~ I will be unable to travel to the voting place in the precinct in which I reside.

~~[ ] Due to the observance of a religious holiday pursuant to the tenets of my religion, I will be unable to cast a ballot at the polling place on the day of the election.~~

I further certify that ~~I made application for absentee ballots, and that~~ I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.

.....
(Signature of voter)

| | |
|---|---|
| ..... | ..... |
| Signature of Witness #1 | Signature of Witness #2 |
| ..... | ..... |
| Address of Witness #1 | Address of Witness #2' |

(3) There shall be printed the application provided by G.S. 163-227.

(c) Instruction Sheets. -- In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the ~~chairman of the~~ county board of elections.

**"§ 163-230. Consideration and ~~approval of applications and~~ issuance of absentee ballots.**

The procedure to be followed in ~~receiving applications for absentee ballots, passing upon their validity, and~~ issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued. -- Upon receipt of a voter's written ~~application~~ request for absentee ballots, the ~~chairman of the~~ county board of elections shall promptly enter in the register of absentee ballot application and ballots issued ~~so much of~~ the following information ~~as he has not already entered there under the provisions of G.S. 163-227(4)~~:

a. Name of voter applying for absentee ballots, and, if applicable, the name and address of the voter's near relative who ~~applied for~~ requested the application for absentee ballots.

b. Number of assigned voter's application when issued.

c. Precinct in which applicant is registered.

d. Address to which ballots are to be mailed, or that the voter voted pursuant to G.S. 163-227.2.

e. Reason assigned for requesting absentee ballots.

f. Date request for application for ballots is received by ~~chairman.~~ the county board of elections.

g. The voter's party affiliation.

h. The date the ballots were mailed or delivered to the voter.

(2) Determination of Validity of ~~Applications~~ Requests for Absentee Ballots. -- ~~The county board of election shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.~~

~~a. Required Meeting of County Board of Elections. -- During the period commencing 50 days before an election, and until 30 days before the election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each week on a day and at an hour to be determined by the board for the purpose of action on applications for absentee ballots. Each member of the board shall be notified in writing of the day and hour such meetings shall be conducted. During the period opening 30 days before an election in which absentee ballots are authorized and closing at 5:00 P.M. on the Tuesday before the election, the county board of elections shall hold public meetings at 10:00 A.M. on Tuesday and Friday of each week, and it shall also hold public meetings at 10:00 A.M. on the eighth, sixth, fourth and first days immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.~~

~~Upon a majority vote, the county board of elections may hold any such public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each day it meets and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so no later then 70 days before the election; thereafter, no change shall be made in the hours or dates fixed for the board's public meetings on absentee ballot applications.~~

~~The chairman of the county board of elections shall give notice to other board members of the schedule of meetings of the board.~~

~~If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper~~

~~circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least 65 days prior to the election. Similar notice shall also be given of the dates and hours of the weekly meetings held until 30 days before the election. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.~~

~~The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.~~

~~b. Procedure at Required Meeting; Making Determination. — At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.~~

The county board of elections, upon receipt of a properly made request for application for ballot by a person authorized to make such request for a person qualified to vote by absentee ballot, shall transmit the application and ballot to the voter in accordance with this Article. During the period commencing 60 days before the election, the board of elections shall each business day no later than 10:00 a.m. post a list of all persons for whom requests for application which have been received by the end of the previous business day. The county board of elections may post updated lists at additional times. Such list shall also include applicants for one-stop voting under G.S. 163-227.2. Such list need not contain all the information on the request. Any registered voter of the county may contest in writing such request, giving specific grounds by which complying with the request would not be lawful. If such contest is received prior to the absentee ballot and application being transmitted to the voter, they shall not be transmitted until the request has been approved by the county board of elections, which shall meet no later than 4:00 p.m. on the next business day after the contest is received to act on the request. At any such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them. If the board approves the request, the application and ballot shall be transmitted in accordance with law if it has not yet been transmitted. If the

board disapproves the request, the ballot and application shall not be transmitted, shall not be counted if the rejection occurs after the ballot has been transmitted, or if the denial comes after the ballot has been counted, it shall be treated as if a challenge has been sustained under G.S. 163-89(e). In the case of one-stop absentee ballots cast under G.S. 163-227.1, if the board of elections denies an application, it shall be treated as if a challenge has been sustained under G.S. 163-89(e). It is a misdemeanor to make a contest under this subdivision if the contester does not know, suspect, or reasonably believe the person not to be qualified to receive an absentee ballot.

The county board of elections may consider the registration records as evidence of the voter's signature, if available, and as any other evidence that may be necessary to pass upon such ~~an~~ a request for application, including the party affiliation of a voter seeking to vote in a primary.

If the board finds that the applicant is a qualified voter of the county, that ~~he~~ the qualified voter is registered in the precinct stated in ~~his~~ the qualified voter's application, that the assertions in ~~his~~ the qualified voter's application are true, and that ~~his~~ the qualified voter's application is in proper form, it shall approve ~~his~~ the qualified voter's application for absentee ballots.

~~c.~~ Record of Board's Determination; Decision Final. -- At the time the county board of elections makes its decision on an application or request for application for absentee ballots, the ~~chairman~~ board shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether ~~his~~ the applicant's application was 'Approved' or 'Disapproved'.

The decision of the board on the validity of an application or request for application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest.

(3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. -- When the county board of elections approves ~~an~~ a request for application for absentee ballots, ~~the chairman~~ the chairman, a member, officer, or employee or the board shall promptly issue and transmit them to the voter only, and not to ~~his~~ the voter's near relative, in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the ~~chairman~~ chairman, a member, officer, or employee of the board of elections shall write or type the words 'Absentee Ballot No. ....' or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. ~~He~~ That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be

barcoded on the ballot the voter's application number, if such barcoding system is approved by the State Board of Elections.

b. The ~~chairman~~ chairman, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, ~~his~~ the absentee voter's application number and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The ~~chairman~~ person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

c. The ~~chairman~~ chairman, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post office address stated in ~~his~~ the applicant's ~~application,~~ request, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 5:00 P.M. on the Tuesday before the election under the provisions of G.S. 163-227(b)(2), in lieu of transmitting the ballots to the applicant in person or by mail, the ~~chairman~~ chairman, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative of the voter.

"**§ 163-230.1. Simultaneous issuance of absentee ballots with application.**

(a) When a qualified voter personally requests by mail an application for absentee ballots, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to vote if ~~his~~ the qualified voter's ~~application~~ request is approved;

(2) A container-return envelope for the ballots, upon the outside of which shall be printed the appropriate application form as provided in G.S. ~~163-227;~~

~~(3) A large envelope (similar to a No. 14 or larger manila envelope) in which the container-return envelope with the ballots may be returned~~ 163-227 and on which the affidavit provided by G.S. 163-229(b) shall be printed; and

(4) An instruction sheet.

The ballots, envelopes and instructions shall be mailed to the voter by the county board's ~~chairman, secretary or director~~ chairman, member, officer, or employee as determined by the board and entered in ~~its official minutes.~~ the register as provided by this Article.

~~On the back of the large transmittal envelope shall be clearly printed or stamped the following statement:~~

~~DO NOT PLACE THE ENVELOPE CONTAINING YOUR BALLOTS INTO THIS ENVELOPE UNTIL YOU HAVE COMPLETED THE APPLICATION ON THE ENVELOPE CONTAINING YOUR BALLOTS AND SECURED THE SIGNATURE OF A WITNESS.~~

(b) The application shall be completed, the ballots marked, the ballots sealed in the container-return envelope, and the ~~large envelope affidavit~~ certificate completed as provided in G.S. ~~163-227 and G.S. 163-231.~~ 163-229. ~~The container-return envelope shall be placed in the large transmittal envelope for return to the chairman of the county board of elections.~~

(c) At its next official meeting after return of the completed container-return envelope ~~and large envelope~~ with the voter's ballots, the county board of elections shall determine whether the container-return envelope ~~and large envelope have~~ has been properly executed. If the board determines that ~~both~~ the container-return envelope ~~and large envelope have~~ has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots. The board may hold official meetings under this section periodically, may hold such meeting on the day of the election before counting begins, along with another meeting to approve any applications which have been received before 12:00 noon on the day of the election under G.S. 163-227(b)(2), or may delegate the approval to the director of elections.

(d) ~~The provisions of this section shall apply only to requests received by mail from and signed by the voter individually and personally. No near relative, guardian, or other person other than the voter himself shall be permitted to apply for absentee ballots under this section.~~ Only the voter may make application for absentee ballots. A near relative of a voter may request an application and ballot on behalf of a voter, on a form approved by the State Board of Elections which shall be provided by the county board of elections. Such form may be delivered to the county board of elections personally by the near relative or by mail.

(e) The State Board of Elections, by ~~regulation~~ rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

**"§ 163-231. Voting absentee ballots and transmitting them to ~~chairman of~~ the county board of elections.**

(a) Procedure for Voting Absentee Ballots. -- In the presence of two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-274(5a), the voter shall:

(1) Mark ~~his~~ the voter's ballots, or cause them to be marked by one of such persons in ~~his~~ the voter's presence according to ~~his~~ the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in ~~his~~ the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in ~~his~~ the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-227 and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the application and certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the ~~chairman of the~~ county board of elections ~~who~~ which issued the ballots.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(b) Transmitting Executed Absentee Ballots to ~~Chairman of~~ County Board of Elections. -- The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the ~~chairman of the~~ county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail, at the voter's expense, or delivered in person, or by the voter's ~~spouse, brother, sister, parent, grandparent, child or grandchild~~ near relative not later than ~~5:00 P.M. on the day before the statewide primary or general election or county bond~~ 7:30 p.m. on the day of the election. If such ballots are received later than that hour, they shall not be accepted for voting.

**"§ 163-232. Certified list of executed absentee ballots; distribution of list.**

(a) The ~~chairman of the~~ county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of ~~elections.~~ elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina
County of .....
I, ....., chairman of the ..... County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ..... day of ....., ~~19~~ ....., which have been approved by the county board of ~~elections.~~ elections and which have been returned no later than 5:00 p.m. on the day before the

election. ~~I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and~~ I ~~further~~ certify that ~~I have~~ the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the ~~voter himself,~~ voter, by mail or in person, except as provided by law, ~~in the case of approved applications received after 5:00 P.M. on the Tuesday or Friday before the election.~~ and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ..... day of ....., ~~19~~.....

.....

(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ..... day of ....., ~~19~~ ..... Witness my hand and official seal.

.....

(Signature of officer
administering oath)

.....

(Title of officer)'

No ~~earlier than 3:00 P.M. on the day before the election and no~~ later than 10:00 A.M. on election day, the ~~chairman~~ county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections. ~~He~~ The board shall retain one copy in the board office for public inspection and ~~he~~ the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The ~~chairman~~ county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the ~~chairman~~ county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration ~~record.~~ record, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the ~~chairman of the~~ county board of elections for resolution by the board of elections prior to certification of results by the board.

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least duplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received after 5:00 p.m. on the day before the election but before 7:30 p.m. on election day. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina
County of .....

I, ....., chairman of the ..... County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ..... day of ....., ....., which have been approved by the county board of elections and which have been returned no later than 5:00 p.m. on the day before the election but before 7:30 p.m. on election day and I further certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ..... day of ....., .....

.....
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ..... day of ....., ..... Witness my hand and official seal.

.....
(Signature of officer
administering oath)

.....
(Title of officer)'

No later than 10:00 p.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection. In addition the county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

On or before the day of the canvass by the county board of elections, a member or employee of the board of elections shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration record. If such person is already recorded as having voted in that election, the director of elections shall enter a challenge which shall be presented to the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) All lists required by this section shall be retained by the county board of elections for a period of ~~four years~~ 22 months after which they may then be destroyed.

**"§ 163-233. Applications for absentee ballots; how retained.**

The ~~chairman of the~~ county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed.

**"§ 163-233.1. Withdrawal of absentee ballots not allowed.**

No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections.

**"§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the ~~chairman or supervisor of elections of the~~ county board of elections in the container-return envelopes shall be retained by the ~~chairman~~ board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than ~~5:00 P.M.~~ 7:30 p.m. on the ~~day before~~ election day in a properly executed container-return envelope shall be counted.

(2) The county board of elections shall meet at 5:00 P.M. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided ~~he~~ the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable ~~necessity.~~ necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted

electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 P.M.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and such fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated 'Pollbook of Absentee Voters' the name of the absentee ~~voter.~~ voter, or if the pollbook is computer generated the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The 'Pollbook of Absentee Voters' shall also contain the names of all persons who voted under G.S. 163-227.2, but such names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The ~~chairman~~ county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections, Raleigh, North Carolina 27602. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the ~~5:00 P.M.~~ meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an 'observer.'

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot.

**"§ 163-236. Violations by ~~chairman of~~ county board of elections.**

The ~~chairman of the~~ county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. ~~He~~ The board shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. 163-227(c). The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of G.S. 163-230(3) is the responsibility and duty of the ~~chairman of the~~ county board of elections.

It shall be the duty of the ~~chairman of the~~ county board of elections to keep current all records required ~~of him~~ by this Article and to make promptly all reports required ~~of him~~ by this Article. If such duty has been assigned to the chairman, member, officer, or employee of the board of elections, they shall carry out the duty.

The willful violation of this section shall constitute a Class 2 misdemeanor.

**"§ 163-237. Certain violations of absentee ballot law made criminal offenses.**

(a) False Statements under Oath Made Class 2 Misdemeanor. -- If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, ~~he~~ that person shall be guilty of a Class 2 misdemeanor.

(b) False Statements Not under Oath Made Class 2 Misdemeanor. -- Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting

any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, ~~he~~ that person shall be guilty of a Class 2 misdemeanor.

(c) Fraud in Connection with Absentee Vote; Forgery. -- Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class I felony.

(d) Violations Not Otherwise Provided for Made Class 2 Misdemeanors. -- If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, ~~he~~ that person shall be guilty of a Class 2 misdemeanor.

**"§ 163-238. Reports of violations to district attorneys.**

It shall be the duty of the State Board of Elections to report to the district attorney of the appropriate prosecutorial district, any violation of this Article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the district attorney to cause such a person to be prosecuted therefor.

**"§ 163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.**

Except as otherwise provided therein, Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this Article."

Section 2. G.S. 163-82.7(g)(2) reads as rewritten:

"(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by ~~mailed~~ absentee ~~ballot.~~ ballot except in person under G.S. 163-227.2. The county board of elections shall establish a procedure at the voting site for:

a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and

b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89."

Section 3. G.S. 163-137(b) reads as rewritten:

"(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least ~~60~~ 50 days prior to the date of any ~~election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted.~~ election."

Section 4. G.S. 163-155(4) reads as rewritten:

"(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using ~~voting machines,~~ direct record voting equipment, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section. In any precinct using direct record voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Such ballots may be transported only by the chief judge, judge, assistant, or a sworn officer of the county police department, sheriff's department, or municipal police officer. Upon receipt by the county board of elections, such ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163-227.2, except that rather than the count commencing when the polls close under G.S. 163-234(5) as provided for one-stop ballots, the count shall commence when from all precincts either ballots under this section are received or notification that no such ballots were cast.

The total for ballots counted by the county board of elections under this subdivision shall be canvassed as if it were a separate precinct."

Section 5. G.S. 163-169(i) reads as rewritten:

"(i) Absentee Ballots. -- Absentee ballots shall be deposited and voted in accordance with the provisions of G.S. 163-227.2 and G.S. 163-234; they shall be counted and tabulated as provided in this section and G.S. 163-170."

Section 6. This act applies to elections held on or after January 1, 1998, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.

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April 29, 1997

TO: Senator Roy A. Cooper, Chair, Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: PCS for Senate Bill 663 – Absentee Ballot Changes.

The PCS for Senate Bill 663, introduced by Sen. Rucho, would do the following things:

1. **Remove the excuse requirement for absentee voting: By mail and in person**. Current law requires an excuse if the voter is required to vote absentee either by mail or in person. The excuses allowed now are:
   * The voter expects to be out of the county all day on election day.
   * The voter will not be able to go to the polls to vote on election day because of disability or sickness.
   * The voter is incarcerated and is eligible to vote because is a misdemeanant.
   * The voter will not be voting on election day because of observing a holiday of that religion.
   * The voter will not be at the polling place because of working for the board of elections somewhere else in the county.

   One of those excuses is required if the voter is to be allowed to vote absentee by mail from the 50th day before an election to the Tuesday before the election. One of those excuses is also required for the voter to vote absentee in person (One-Stop) from the next business day after the twenty-fifth day before the election until the Friday before the election. The PCS removes the excuse for mail and One-Stop absentee voting during those periods.

   Under current law, there is one special category of absentee voter who is allowed to vote after the deadline a week before the election: The voter whose excuse is illness or other disability. The voter is allowed to apply up till 5 p.m. the day before the election. The PCS leaves the illness/disability excuse in place for the special late period, but requires that the voter or a near relative or guardian request the ballots in person before 5 p.m. on the Friday before the election—the same deadline as for One-Stop voting. The effect is to remove one business day from the illness/disability period. But the bill expands the definition of "near relative," now spouse, brother, sister, parent, grandparent, child, or grandchild, to include mother-in-law, father-in-law, daughter-in-law, son-in-law step-parent, or step-child. And the PCS allows ballots to be counted if they are received by the board up till 7:30 p.m. on election day.

2. **Allow a county board of elections to designate additional sites for One-Stop**. Currently, One-Stop is allowed only in the county board of elections office. In almost all counties (exceptions, Orange and

Guilford) that means only one place. The PCS would allow the county board of elections to designate additional sites as part of a plan approved by the State Board for the county.

3. **Allow county boards of elections to count One-Stop ballots like election-day ballots**, as long as the ballots can be retrieved if it turns out the voters is not qualified. If the board determines the voter is not qualified, the board must challenge the ballot under current challenge procedure.

4. **Streamline the process by which a county elections board approves absentee ballots and applications**.:

   * Allows a 4-step process for all off-site absentee voting: (1) A written request for absentee voting is accepted, (2) A numbered and recorded package containing an application (on the outside of an envelope) and a ballot is sent to the voter, and (3) the voter marks the ballot in the presence of witnesses, fills out the application and sends the ballot back, and (4) the board approves the application at its next meeting. That is essentially the process now if the request is mailed in by the voter. But if the request comes not from the voter but from the voter's near relative or guardian, an extra step is now required: the application must be sent to the voter separate from the ballot, the voter must fill out the application and send it back in, the board approves the application in a meeting, and only then does the ballot go out to the voter. The State Board of Elections feels that this extra step is a vestige of the past that inconveniences voters and burdens boards of elections with paperwork but does little to address fraud problems.

   * Reduces the number of required meetings boards of elections must hold to approve absentee applications. Current law requires all board of elections to hold the following meetings to approve absentee applications: From the 50th day to the 30th day before an election, one meeting a week. After the 30th day, two meetings a week, one on Tuesday at 10 a.m. and one on Friday at 10 a.m. It must also hold meetings at 10 a.m. on the eighth, sixth, fourth days and also on the day before an election. The bill replaces this elaborate schedule with a requirement that a board must hold one meeting a week at 5 p.m. Tuesdays for the last three weeks before an election., but may meet more often. Since the lack of approval of an application will no longer delay the transmission of an application or ballot to a voter, the State Board of Elections feels that the county boards ought to have flexibility in holding the meetings. If the board does not approve an application, the ballot, which has been marked by the voter and is stored in a numbered envelope, is simply not counted.

   * Reduces the complexity of the package sent to the voter, and lets the State Board design the application. Currently, the statutes require the voter to be sent a package with two envelopes to for the voter to return to the board. This results in confusion for some voters. Also, the statute spells out what the application form shall look like. The State Board would like for the voter to have only one envelope to deal with, the one with the application form on it. The State Board would also like to have the flexibility to design the application form. The PCS would make those changes.

   * Increases options for a voter in returning a voted ballot to the board of elections. Now it must be done by mail only. The PCS would allow commercial courier service as well. Either would be at the voter's expense.

The bill would be effective beginning with the 1998 elections.

*(The contents of the PCS for SB 663 are the same as those of HB 101.)*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 663
Proposed Committee Substitute -- S663-PCSRR-001

Short Title: Absentee Voting Changes. (Public)

Sponsors:

Referred to: Judiciary.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE ELECTION LAWS DESIGNED TO PREVENT LONG LINES AT THE POLLS ON ELECTION DAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-226 reads as rewritten:

"**§ 163-226. Who may vote an absentee ballot.**

(a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

(1) The voter expects <u>not</u> to be ~~absent from the county in which he is registered during the entire period that the polls are open~~ <u>present at the voting place to vote in person</u> on the day of the specified election in which the voter desires to vote; <u>or</u>

(2) The voter is unable to be present at the voting place to vote in person on the day of the specified election in which the voter desires to vote because of the voter's sickness or other physical disability.

~~(3) The voter is incarcerated, whether in the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of the voter's residence in any election, specified herein, in which the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;~~

~~(3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or~~

~~(4) The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and the voter's assigned duties on the day of the election will cause the voter to be unable to be present at the voting place to vote in person and provided such employee has the application witnessed by the chairman of the county board of elections.~~

(b) Absentee Ballots; Exceptions. -- Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections.

(c) As used in this Subchapter, unless the context clearly requires otherwise, the term 'election' includes a general, primary, second primary, runoff election, bond election, referendum, or special election."

Section 2. G.S. 163-226.1 reads as rewritten:

"**§ 163-226.1. Absentee voting in primary.**

A qualified voter may vote by absentee ballot in a ~~statewide or countywide~~ partisan primary provided ~~he~~ the qualified voter is affiliated, at the time ~~he~~ the qualified voter makes application for absentee ballots, with the political party in whose primary ~~he~~ the qualified voter wishes to ~~vote.~~ vote, except that an unaffiliated voter may vote in a party primary if permitted under G.S. 163-119. The official registration records of the county in which the voter is registered shall be proof of whether ~~he~~ the

qualified voter is affiliated with a political party and of the party, if any, with which ~~he~~ the qualified voter is affiliated."

Section 3. G.S. 163-226.3 reads as rewritten:

"**§ 163-226.3. Certain acts declared felonies.**

(a) Any person who shall, in connection with absentee voting in any ~~primary, general, municipal or special~~ election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~, or the voter's verifiable legal guardian;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote ~~his~~ that voter's absentee ballot outside of the voting booth or private room provided to ~~him~~ the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance in getting to and from the voting booth or private room and in preparing and marking ~~his~~ that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter ~~as defined in G.S. 163-227(c)(4)~~, or the voter's verifiable legal guardian;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or verifiable

legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, ~~or officer authorized to administer oaths acting pursuant to G.S. 163-231(a)(1),~~ to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into ~~his~~ that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3), and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist ~~him~~ the voter in marking ~~his~~ that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark ~~his~~ that voter's absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit ~~such~~ that affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a)."

Section 4. G.S. 163-227 is repealed.

Section 5. G.S. 163-227.1 reads as rewritten:

"**§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary.**

A voter applying for an absentee ballot for a primary election who will be ~~absent from the county of his residence~~ eligible to vote under this Article on the day of the primary and second primary shall be permitted by the county board of elections to indicate ~~such~~ that fact on ~~his~~ that voter's application and ~~such~~ that voter shall automatically be issued an application and

absentee ballot for the second primary if one is called. The county board of elections shall consider ~~such~~ that indication a separate request for application for the second primary and, at the proper time, shall enter ~~such~~ that voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may ~~apply for~~ make a written request for absentee ballots for a second primary not earlier than the day a second primary is called and not later than ~~5:00 P.M. on the Tuesday prior to the date on which the second primary is held.~~ the date and time provided by G.S. 163-230.1.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section."

Section 6. G.S. 163-227.2 reads as rewritten:

"**§ 163-227.2. Alternate procedures for requesting application for absentee ballot; 'one-stop' voting procedure in board office.**

(a) A person expecting ~~to be absent from the county~~ not to be present at the polling place in which ~~he~~ that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized ~~or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4)~~ may request an application for absentee ballots, complete the application, ~~receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered~~ and vote under the provisions of this section.

(b) Not earlier than the ~~twenty-fourth day~~ first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which ~~he~~ a voter seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the director of elections of the board, or an employee of the board of elections, authorized by the board, furnish ~~him~~ the voter with an application form as specified in G.S. ~~163-227.~~ 163-229. The voter shall complete the application in the presence of the chairman, member, director of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, director of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ~~ballot~~ requests, applications, and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and shall furnish the voter with the ballots to which the application for absentee ballots ~~applies; and shall furnish the voter with a container-return envelope.~~ applies. The voter thereupon shall ~~comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b).~~ vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of ~~elections.~~ elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. ~~For the purposes of this section only, the~~ The application under this subsection shall be signed in the presence of the chairman, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, ~~member~~ member, employee, or director of elections of the board shall keep the voter's application for absentee ballots ~~and the sealed container-return envelope~~ in a safe place, separate and apart from other applications and container-return envelopes. ~~At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article.~~ If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at ~~his~~ that voter's

residence address ~~or~~ and at the address shown in the application for absentee ballots; and the board ~~chairman~~ shall ~~retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.~~ enter a challenge under G.S. 163-89.

(e) The voter shall vote ~~his~~ that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote ~~his~~ that voter's absentee ballot in that room. ~~The voting booth shall be in the office of the county board of elections.~~ If the voter needs assistance in getting to and from the voting booth and in preparing and marking ~~his~~ that voter's ballots or if ~~he~~ the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter ~~as defined in G.S. 163-227(c)(4)~~, or the voter's verifiable legal guardian shall be entitled to assist the voter. The ballot shall be a paper ballot or a voting system in which a paper ballot is counted by computer or mechanical device. The ballot in any case shall have the ballot number on it in accordance with G.S. 163-230.1(a2)(1). After the voter casts the ballot, the voter shall deposit the ballot in the ballot box or voting system in the same manner as if that box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with rules approved by the State Board of Elections, which shall include verifying that no additional ballots have been placed in the box or system. If a direct record electronic voting system with retrievable ballots is approved by the State Board of Elections, it may be used for ballots cast under this section under rules approved by the State Board of Elections.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior

to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during ~~such~~ that time.

(f1) Notwithstanding any other provision of this section, a county board of elections may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted."

Section 7. G.S. 163-228 reads as rewritten:

"**§ 163-228. Register of absentee ~~ballot~~ requests, applications, and ballots issued; a public record.**

The State Board of Elections shall ~~design~~ approve an official register ~~and provide a source of supply thereof from~~ in which the ~~chairman of the~~ county board of elections in each county of the State shall ~~purchase a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded~~ record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
(2) Number of assigned voter's application when issued.
(3) Precinct in which applicant is registered.
(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
(5) Reason assigned for requesting absentee ballots.
(6) Date request for application for ballots is received by the county board of elections.
(7) The voter's party affiliation.
(8) The date the ballots were mailed or delivered to the voter.
(9) ~~whatever~~ Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day, or a supplement printed out each business day of new information.

The register of absentee ~~ballot~~ requests, applications, and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 50 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

Section 8. G.S. 163-229 reads as rewritten:

"**§ 163-229. Absentee ballots, applications on container-return envelopes, and instruction sheets.**

(a) Absentee Ballot Form. -- In accordance with the provisions of G.S. ~~163-230(3),~~ 163-230.1, persons entitled to vote by absentee ballot shall be furnished with ~~regular~~ official ballots. ~~Separate or distinctly marked absentee ballots shall not be used.~~

(b) Application on Container-Return Envelope. -- In time for use not later than 50 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the ~~chairman of the~~ county board of elections. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163-82.16. The container-return envelope shall be printed in accordance with the ~~following instructions:~~ instructions of the State Board of Elections.

~~(1) On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:~~

~~"Certification of Election Official~~

~~The undersigned election official does by his hand and seal certify that..... is a registered and qualified voter of ..... County, Precinct # ..... and has made proper application to vote under the Absentee Ballot Law of North Carolina.~~

~~.....(Seal)~~

~~Chairman-Member"~~

~~(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:~~

~~"Certificate of Absentee or Sick Voter~~
~~State of.....~~
~~County of.....~~
~~I, ....., do certify that I am a resident and registered voter in ..... precinct, ..... County, North Carolina; that on the day of an election, ....., ..... (check whichever of the following statements is correct.)~~
~~[ ] I will be absent from the county in which I reside.~~
~~[ ] Due to sickness or physical disability, or incarceration as a misdemeanant, I will be unable to travel to the voting place in the precinct in which I reside.~~
~~[ ] Due to the observance of a religious holiday pursuant to the tenets of my religion, I will be unable to cast a ballot at the polling place on the day of the election.~~
~~I further certify that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.~~

~~.....~~
~~(Signature of voter)~~

~~..... .....~~
~~Signature of Witness #1 Signature of Witness #2~~
~~..... .....~~
~~Address of Witness #1 Address of Witness #2".~~

(c) Instruction Sheets. -- In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the ~~chairman of the~~ county board of elections."

Section 9. G.S. 163-230 is repealed.

Section 10. G.S. 163-230.1 reads as rewritten:

"**§ 163-230.1. Simultaneous issuance of absentee ballots with application.**

(a) ~~When a~~ A qualified voter ~~personally requests by mail~~ who is eligible to vote by absentee ballot under G.S. 163-226(a)(1), or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 p.m. on the Tuesday before the election. ~~an application for absentee ballots,~~ The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to ~~vote if his application is approved;~~ vote;

(2) A container-return envelope for the ballots, ~~upon the outside of which shall be printed the appropriate application form as provided in G.S. 163-227;~~ printed in accordance with G.S. 163-229; and

(3) ~~A large envelope (similar to a No. 14 or larger manila envelope) in which the container-return envelope with the ballots may be returned and on which the affidavit provided by G.S. 163-229(b) shall be printed; and~~

(4) An instruction sheet.

The ballots, ~~envelopes~~ envelope, and instructions shall be mailed to the voter by the county board's ~~chairman, secretary or director~~ chairman, member, officer, or employee as determined by the board and entered in ~~its official minutes.~~ the register as provided by this Article.

~~On the back of the large transmittal envelope shall be clearly printed or stamped the following statement:~~

~~DO NOT PLACE THE ENVELOPE CONTAINING YOUR BALLOTS INTO THIS ENVELOPE UNTIL YOU HAVE COMPLETED THE APPLICATION ON THE ENVELOPE CONTAINING YOUR BALLOTS AND SECURED THE SIGNATURE OF A WITNESS.~~

(a1) Absence for Sickness or Physical Disability. -- Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near

relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the Friday before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and

(3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. -- When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words 'Absentee Ballot No. ....' or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope

may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the voter in person: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications earlier than 50 days prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 50 days prior to the election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be ~~completed,~~ completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the ~~large envelope affidavit~~ certificate completed as provided in ~~G.S. 163-227 and~~ G.S. 163-231. ~~The container-return envelope shall be placed in the large transmittal envelope for return to the chairman of the county board of elections.~~

(c) At its next official meeting after return of the completed container-return envelope ~~and large envelope~~ with the voter's ballots, the county board of elections shall determine whether the container-return envelope ~~and large envelope have~~ has been properly executed. If the board determines that ~~both~~ the container-return envelope ~~and large envelope have~~ has been properly executed, it shall approve the application and deposit

the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. -- During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was 'Approved' or 'Disapproved'.

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

~~(d) The provisions of this section shall apply only to requests received by mail from and signed by the voter individually and personally. No near relative, guardian, or other person other than the voter himself shall be permitted to apply for absentee ballots under this section.~~

(e) The State Board of Elections, by ~~regulation~~ rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, 'near relative' means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild."

Section 11. G.S. 163-231 reads as rewritten:

"§ 163-231. Voting absentee ballots and transmitting them to ~~chairman of~~ the county board of elections.

(a) Procedure for Voting Absentee Ballots. -- In the presence of two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-274(5a), the voter shall:

(1) Mark ~~his~~ the voter's ballots, or cause them to be marked by one of such persons in ~~his~~ the voter's presence according to ~~his~~ the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in ~~his~~ the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in ~~his~~ the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the application and certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the ~~chairman of the~~ county board of elections ~~who~~ which issued the ballots.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(b) Transmitting Executed Absentee Ballots to ~~Chairman of~~ County Board of Elections. -- The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the ~~chairman of the~~ county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by ~~mail,~~ mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's ~~spouse, brother, sister, parent, grandparent, child or grandchild~~ near relative or verifiable legal guardian not later than ~~5:00 P.M. on the day before the statewide primary or general election or county bond~~ 7:30 p.m. on the day of the election. If such

ballots are received later than that hour, they shall not be accepted for voting."

Section 12. G.S. 163-232 reads as rewritten:

"**§ 163-232. Certified list of executed absentee ballots; distribution of list.**

(a) The ~~chairman of the~~ county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of ~~elections.~~ elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina

County of .....

I, ....., chairman of the ..... County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ..... day of ....., ~~19~~ ....., which have been approved by the county board of ~~elections.~~ elections and which have been returned no later than 5:00 p.m. on the day before the election. ~~I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and~~ I ~~further~~ certify that ~~I have~~ the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the ~~voter himself,~~ voter, by mail or by commercial courier service or in person, except as provided by law, ~~in the case of approved applications received after 5:00 P.M. on the Tuesday or Friday before the election.~~ and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ..... day of ....., ~~19~~.....

.....

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this ..... day of ....., ~~19~~ ..... Witness my hand and official seal.

.....

(Signature of officer administering oath)

.....

(Title of officer)'

No ~~earlier than 3:00 P.M. on the day before the election and no~~ later than 10:00 A.M. on election day, the ~~chairman~~ county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections. ~~He~~ The board shall retain one copy in the board office for public inspection and ~~he~~ the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The ~~chairman~~ county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the ~~chairman~~ county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration ~~record.~~ record, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the ~~chairman of the~~ county board of elections for resolution by the board of elections prior to certification of results by the board.

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least duplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received after 5:00 p.m. on the day before the election but before 7:30 p.m. on election day. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina

County of .....

I, ....., chairman of the ..... County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ..... day of ....., ....., which have been approved by the county board of elections and which have been returned after 5:00 p.m. on the day before the election but before 7:30 p.m. on election day, and I further certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ..... day of ....., .....

.....

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this ..... day of ....., ..... Witness my hand and official seal.

.....

(Signature of officer administering oath)

.....

(Title of officer)'

No later than 10:00 p.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection. In addition the county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

On or before the day of the canvass by the county board of elections, a member or employee of the board of elections shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration record. If that person is already recorded as having voted in that election, the director of elections shall enter a challenge which shall be presented to the county board of

elections for resolution by the board of elections prior to certification of results by the board.

(c) All lists required by this section shall be retained by the county board of elections for a period of ~~four years~~ 22 months after which they may then be destroyed."

Section 13. G.S. 163-233 reads as rewritten:

"**§ 163-233. Applications for absentee ballots; how retained.**

The ~~chairman of the~~ county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed."

Section 14. G.S. 163-234 reads as rewritten:

"**§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the ~~chairman or supervisor of elections of the~~ county board of elections in the container-return envelopes shall be retained by the ~~chairman~~ board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than ~~5:00 P.M.~~ 7:30 p.m. on the ~~day before~~ election day in a properly executed container-return envelope shall be counted.

(2) The county board of elections shall meet at 5:00 P.M. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided ~~he~~ the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of

counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable ~~necessity.~~ necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 P.M.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and ~~such~~ that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated 'Pollbook of Absentee Voters' the name of the absentee ~~voter.~~ voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be

placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The 'Pollbook of Absentee Voters' shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The ~~chairman~~ county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of ~~Elections, Raleigh, North Carolina 27602.~~ Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the ~~5:00 P.M.~~ meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an 'observer.'

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

Section 15. G.S. 163-236 reads as rewritten:

"**§ 163-236. Violations by ~~chairman of~~ county board of elections.**

The ~~chairman of the~~ county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. ~~He~~ The board shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. ~~163-227(c).~~ 163-230.1. The issuance of ballots to persons whose ~~applications~~ requests for absentee ballots have been ~~approved~~ received by the county board of elections under the provisions of G.S. ~~163-230(3)~~ 163-230.1 is the responsibility and duty of the ~~chairman of the~~ county board of elections.

It shall be the duty of the ~~chairman of the~~ county board of elections to keep current all records required ~~of him~~ by this Article and to make promptly all reports required ~~of him~~ by this Article. If that duty has been assigned to the chair, member, officer, or employee of the board of elections, they shall carry out the duty.

The willful violation of this section shall constitute a Class 2 misdemeanor."

Section 16. G.S. 163-82.7(g)(2) reads as rewritten:

"(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by ~~mailed~~ absentee ~~ballot.~~ ballot except in person under G.S. 163-227.2. The county board of elections shall establish a procedure at the voting site for:

a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and

b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89."

Section 17. G.S. 163-137(b) reads as rewritten:

"(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least ~~60~~ 50 days prior to the date of any ~~election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted.~~ election."

Section 18. G.S. 163-155(4) reads as rewritten:

"(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the county board of elections, those ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163-227.2, except that rather than the count commencing when the polls close under G.S. 163-234(5) as provided for one-stop ballots, the count shall commence when the board has received from each precinct either that precinct's ballots or notification that no such ballots were cast.

The total for ballots counted by the county board of elections under this subdivision shall be canvassed as if it were a separate precinct."

Section 19. G.S. 163-169(i) reads as rewritten:

"(i) Absentee Ballots. -- Absentee ballots shall be deposited and voted in accordance with the provisions of G.S. 163-227.2 and G.S. 163-234; they shall be counted and tabulated as provided in this section and G.S. 163-170."

Section 20. Article 21 is amended by adding a new section to read:

"**§ 163-257. Facsimile transmission of election materials.**

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive facsimile absentee ballot applications and accept voted ballots by facsimile from eligible electors as defined in G.S. 163-245."

Section 21. This act applies to elections held on or after January 1, 1998, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

# SENATE BILL 896

Short Title: Legal Representation of Corporations. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

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) This section does not prohibit an attorney retained by a corporation, whether or not the attorney is also an employee of the corporation, from representing the corporation or an officer, director, employee, or agent of the corporation in an action, demand, or claim against the corporation or the officer, director, employee, or agent, jointly or severally, so long as the claim arises out of action of the officer, director, employee, or agent that is taken on behalf of the corporation and is within the scope of the employment or agency of the officer, director, employee, or agent."

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.

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April 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**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 officer, director, employee, or agent of the corporation in an action, demand, or claim against the corporation or its personnel as long as the claim arises out of action taken on behalf of the corporation and is within the scope of employment or agency of the officer, director, employee or agent.

The bill becomes effective October 1, 1997 and applies to acts from which claims, demands, or actions arise on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 896
Proposed Committee Substitute S896-PCS4592

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

# SENATE BILL 897

Short Title: Amend Elec. Surveillance Law. (Public)

Sponsors: Senators Rand; Carrington, East, Hoyle, and McDaniel.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC SURVEILLANCE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-286(21) reads as rewritten:

"(21) 'Wire communication' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such ~~communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~ communication."

Section 2. G.S. 15A-291 reads as rewritten:

"**§ 15A-291. Application for electronic surveillance order; judicial review panel.**

(a) The Attorney General or the Attorney General's designee may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a judicial review panel for an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application

is made, and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North ~~Carolina,~~ Carolina or an Associate Justice acting as the Chief Justice's designee, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice. A judicial review panel may be appointed by the Chief Justice or an Associate Justice acting as the Chief Justice's designee ~~pursuant to the Attorney General's written notification~~ upon the notification of the Attorney General's Office of ~~his~~ the intent to apply for an electronic surveillance order.

(b) A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General or the Attorney General's designee. ~~and by no other person.~~ The Attorney ~~General,~~ General or the Attorney General's designee in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General or the Attorney General's designee may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code. In applying section 2518 the word "judge" in that section shall be construed to refer to the judicial review panel, unless the context otherwise indicates. The judicial review panel may stipulate any special conditions it feels necessary to assure compliance with the terms of this act.

(c) No judge who sits as a member of a judicial review panel shall preside at any trial or proceeding resulting from or in any manner related to information gained pursuant to a lawful electronic surveillance order issued by that panel.

(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:

a. Details as to the particular offense that has been, or is being committed;

b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A particular description of the type of communications sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel."

Section 3. G.S. 15A-294 is amended by adding a new subsection to read:

"(d1) The notification required pursuant to G.S. 15A-294(d) may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of an electronic surveillance or a criminal investigation. Delay of notification shall be only by order of the judicial review panel. The period of delay shall be designated by the judicial review panel and may be extended from time to time until the jeopardy to the electronic surveillance or the criminal investigation dissipates."

Section 4. G.S. 15A-298 reads as rewritten:

"**§ 15A-298. Subpoena authority.**

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or ~~his~~ the Director's designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

(1) Disclose information concerning local or long-distance ~~telephone~~ toll ~~billing~~ records or subscriber information; and

(2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation."

Section 5. This act is effective when it becomes law and applies to all applications filed on or after that date.

**North Carolina General Assembly**
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April 29, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **SENATE BILL 897 - AMEND ELEC. SURVEILLANCE LAW**
Senator Rand

Senate Bill 897 makes technical amendments to the electronic surveillance law. It also adds a new subsection to the statute regarding authorization for disclosure and use of intercepted wire, oral, or electronic communications. Under current law, within 90 days after the filing of an application for an electronic surveillance order (ESO) or the termination of the period of an order, the issuing judicial review panel must serve on the persons named in the order an inventory that includes notice of the fact of the entry of the order or the application, the date of the entry and the period of the authorized interception, and the fact that during that period wire, oral, or electronic communications were or were not intercepted. Section 3 of the bill provides that the required notification may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of an electronic surveillance or a criminal investigation. The bill would be effective when it becomes law and apply to all applications for ESOs filed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 228*

Short Title: Child Abuse/No Report Misdem. (Public)

Sponsors: Senators Winner; Allran, Cooper, and Martin of Guilford.

Referred to: Judiciary.

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.**

Any person or institution who 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. Any person or institution

required by this section to report child abuse, neglect, or dependency or a child's death due to suspected maltreatment, who knowingly and willfully fails to make the report, or who knowingly and willfully prevents another from making the report, shall be guilty of a Class 3 misdemeanor.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

S228-CSRV-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 228
THIS IS A DRAFT 15-APR-97 11:38:55
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 29, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **228** Child Abuse/No Report Misdemeanor

| | |
|---|---|
| Draft Number: | PCS 7788 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 764*

Short Title: Workers Compensation Medical Care. (Public)

Sponsors: Senators Kerr; Allran, Ballantine, Cochrane, East, Foxx, Garwood, Hartsell, Horton, Hoyle, Kincaid, Martin of Pitt, McDaniel, Shaw of Guilford, and Warren.

Referred to: Judiciary.

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN EMPLOYER AND ITS REPRESENTATIVES TO CONTACT AN EMPLOYEE'S TREATING PHYSICIAN AS NECESSARY TO EXERCISE THE EMPLOYER'S RIGHT TO DIRECT MEDICAL TREATMENT AND TO OBTAIN INFORMATION REGARDING MEDICAL TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53 and the prohibition against ex parte contacts at common law, the employer, its insurer, representatives, attorneys, or claims adjusters may directly communicate in person, orally, or in writing with any medical provider rendering treatment for any injury claimed by the employee to be compensable under this Chapter and may obtain copies of records of the treatment. The employee, or the employee's attorney, if he or she is represented, shall be notified of the substance of the conversation promptly thereafter. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be

borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

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April 29, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 764 - WORKERS COMPENSATION MEDICAL CARE**
**Proposed Committee Substitute**
Senator Kerr

The proposed committee substitute for Senate Bill 764 provides that in a workers compensation case, an employer paying medical compensation to a provider may obtain records of the treatment without the express authorization of the employee. The bill provides that the communication is authorized notwithstanding statutory law regarding physician and patient communications, and common law prohibitions against ex parte contacts.

Under the Workers' Compensation Act, G.S. 97-27(b) currently provides that "No fact communicated to or otherwise learned by any physician . . . who may have . . . examined the employee, or . . . been present at any examination, shall be privileged, either in hearings provided for by this Article or any action at law." This is considered an exception to the statutory physician-patient privilege created by G.S. 8-53.

In Crist v. Moffatt (326 N.C. 326), a medical malpractice case, the Court held that "defense counsel may not interview plaintiff's nonparty treating physician privately without plaintiff's express consent" because "considerations of patient privacy, the confidential relationship between doctor and patient, the adequacy of formal discovery devices, and the untenable position in which ex parte contacts place the nonparty treating physician supersede defendant's interest in a less expensive and more convenient method of discovery." This principal was applied in a workers compensation case in 1996 by the Court of Appeals. In Salaam V. North Carolina DOT (122 N.C. App. 83), the Court held that the Industrial

Commission erred by admitting a physician's deposition testimony in light of the non-consensual ex parte contact between the employer and the claimant's physician. The employer argued that the claimant suffered no prejudice by admitting the physician's deposition over his objection because the claimant " was allowed to question the physician about the [ ex parte ] communication and show any possible taint or bias." The Court noted that although the opportunity to cure any prejudice resulting from ex parte communications prior to deposition is theoretically available in every adversarial proceeding, the Crist Court appeared to have established a protection against non-consensual ex parte communications.

Senate Bill 764 would allow an employer to contact an employee's treating physician and obtain medical records without the employee's consent. The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 764*
Proposed Committee Substitute S764-PCS8686

Short Title: Workers' Compensation Medical Care. (Public)

Sponsors:

Referred to:

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING EMPLOYER ACCESS TO MEDICAL INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be

borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 799

Short Title: Discipline Disclosure Act. (Public)

Sponsors: Senators Cooper and Hoyle.

Referred to: Judiciary.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.5. Public employee's personnel records.**

(a) In order to maintain the confidence in the fitness and performance of public employees who work in the public interest and are paid from public funds, it is the policy of this State to have open access to employee records that pertain to the employee's job performance and qualifications for that job.

(b) Each department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the public employee is currently assigned. Such information is a public record.

(c) A public employee's employment application and any resume, personal history, recommendation, or other information submitted by or on behalf of the public employee in support thereof, are public records.

(d) Records related to any personnel action imposed upon a public employee, including, but not limited to, separation, suspension, demotion, reprimand, warning, or transfer, are public records. At a minimum, every supervisor shall place in the public employee's personnel record a written summary of the personnel action imposed upon the public employee, including the circumstances that led to the personnel action, the nature of the action taken, and the effective dates of the action.

(e) The names of public employees who provide information confidentially to persons investigating whether to bring a personnel action against a public employee are not public records unless the names are otherwise publicly disclosed.

(f) All records related to commendations or awards bestowed upon public employees are public records; provided, however, that such records may be withheld from public inspection until the commendation or award has been received by or bestowed upon the public employee.

(g) Once a public employee has been the subject of a personnel action, including, but not limited to, separation, suspension, demotion, reprimand, warning, or transfer, all records of that public employee's performance, including evaluations or appraisals, are public records.

(h) Subject only to rules and regulations for the safekeeping of the records, adopted by the appropriate oversight body, every person having custody of such personnel records shall permit them to be inspected and examined during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining, or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(i) For purposes of this section, 'public employee' shall mean any employee, former employee, or applicant for employment by any department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority."

Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), and 162A-6.1 are repealed.

Section 3. G.S. 115C-321 reads as rewritten:

"**§ 115C-321. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in G.S. 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel

file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The superintendent and other supervisory personnel;

(3) Members of the local board of education and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record."

Section 4. G.S. 17C-7(c) reads as rewritten:

"(c) Any papers, documents, or other records which become the property of the Commission that are placed in the criminal justice officer's personnel file maintained by the Commission shall be subject to the same disclosure requirements as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of personnel records."

Section 5. G.S. 74E-5(b) reads as rewritten:

"(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 for other personnel records."

Section 6. G.S. 115D-29 reads as rewritten:

"**§ 115D-29. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in this ~~Article,~~ Article or in G.S. 132-1.5, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record."

Section 7. This act becomes effective January 1, 1998.

**North Carolina General Assembly**
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April 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 799 - DISCIPLINE DISCLOSURE ACT** - Senator Cooper and Hoyle.

The Proposed Committee Substitute for Senate Bill 799 makes certain portions of public employees' personnel records public records.

Section 1 creates a new section of the Public Records law involving public employees' personnel records. This section applies to any employee, former employee, or applicant for employment by any department, agency, institution, commission, or bureau of the State, any employee of The University of North Carolina and its constituent institutions, any public hospital employee, and any employee of a city, county, local school board, or area mental health authority.

The employee public record must include the name, age, date of original hire, current position, title, current salary, date and amount of most recent change in pay, date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification, and the office or station currently assigned.

The portions of the employee's application which address the person's qualifications for the position are also public. These include educational degrees, previous job experience and dates worked, military records and aptitude test scores. Letters of recommendation are also public unless the writer objects in writing to the public disclosure of their recommendations.

Records related to serious disciplinary actions are public. Serious disciplinary actions include separations, suspensions, demotions, or transfers unrelated to agency reorganization. Serious disciplinary actions resulting from physical or mental illness or chemical dependency are not public records.

Personally identifying information about an employee who provides information to investigators of another employee are not public records.

Records related to official commendations or awards given to public employees are public record, but may be withheld from the public pending the granting of the award.

Once two serious disciplinary actions are imposed within a 3-year period, all records of the employee's performance, including evaluations and appraisals, are public.

Persons responsible for maintaining these records must make the public records available to be inspected and examined during regular business hours. An employee who acts in good faith in complying with the disclosure requirements is not subject to liability.

Section 2 repeals sections of the law governing public schools, community colleges, area mental health authorities, State personnel, counties, cities, and water and sewer authorities personnel records that are being replaced by the provisions of Section 1 of the bill.

Sections 3, 4, 5, and 6 make conforming changes to other statutes.

The bill becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 799
Proposed Committee Substitute S799-PCS1794

Short Title: Discipline Disclosure Act. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.5. Public employee's personnel records.**

(a) In order to maintain the confidence in the fitness and performance of public employees who work in the public interest and are paid from public funds, it is the policy of this State to have open access to employee records that pertain to the employee's job performance and qualifications for that job.

(b) Each department, agency, institution, commission, or bureau of the State of North Carolina; The University of North Carolina or its constituent institutions; any public hospital, county, municipality, local board of education, or area mental health authority, shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the public employee is currently assigned. Such information is a public record.

(c) Information contained in a public employee's employment application that demonstrates the employee's qualifications for the position held by a public employee are public records. Such information includes, but is not limited to, educational degrees, previous employment experience and the dates the public employee held previous relevant employment, military records, and the scores on aptitude tests taken by the public employee. Letters of recommendation are public records so long as the person who writes the recommendation does not object in writing to public disclosure of the letter of recommendation.

(d) Records related to serious disciplinary actions imposed on a public employee are public records. As used in this Article, serious disciplinary actions are separation, suspension, demotion, or transfer unrelated to an agency reorganization. At a minimum, every supervisor shall place in the public employee's personnel record a written summary of the serious disciplinary action imposed on the public employee, including the circumstances that led to the disciplinary action, the nature of the disciplinary action taken, and the effective dates of the disciplinary action.

(e) Personally identifying information about public employees who provide information confidentially to persons investigating whether to bring a disciplinary action against a public employee is not a public record unless the personally identifying information is otherwise disclosed.

(f) All records related to official commendations or awards bestowed upon public employees are public records; provided, however, that such records may be withheld from public inspection until the commendation or award has been received by or bestowed upon the public employee.

(g) Once two serious disciplinary actions have been imposed on a public employee within a three-year period, all records of that public employee's performance, including evaluations or appraisals, are public records.

(h) Subject only to rules and regulations for the safekeeping of the records, adopted by the appropriate oversight body, every person having custody of such personnel records shall permit them to be inspected and examined during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining, or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(i) Any person employed by a public agency acting in good faith to comply with the disclosure requirements of this section is not subject to liability.

(j) For purposes of this section, 'public employee' shall mean any employee, former employee, or applicant for employment by any department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority."

Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), and 162A-6.1 are repealed.

Section 3. G.S. 115C-321 reads as rewritten:

"**§ 115C-321. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in G.S. 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The superintendent and other supervisory personnel;

(3) Members of the local board of education and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record."

Section 4. G.S. 17C-7(c) reads as rewritten:

"(c) Any papers, documents, or other records which become the property of the Commission that are placed in the criminal justice officer's personnel file maintained by the Commission shall be subject to the same disclosure requirements as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of personnel records."

Section 5. G.S. 74E-5(b) reads as rewritten:

"(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 for other personnel records."

Section 6. G.S. 115D-29 reads as rewritten:

"**§ 115D-29. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in this ~~Article,~~ Article or in G.S. 132-1.5, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record."

Section 7. This act becomes effective January 1, 1998.

**North Carolina General Assembly**
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April 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**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 2 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. This section also eliminates the requirement for the Secretary to notify the owner prior to the registration period expiring. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 864

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 two 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 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.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 825

Short Title: Contributions in Session. (Public)

Sponsors: Senators Page; East, Forrester, Garwood, and Webster.

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO FUND-RAISING IN SESSION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of the Council of State, a member of the General Assembly, or a political committee, the purpose of which is to assist a member or members of the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die, or recesses or adjourns for more than 10 days.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall solicit

a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

Section 2. This act becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 825
Proposed Committee Substitute -- S825-PCSRR-001

Short Title: Candidate Accountability. (Public)

Sponsors:

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CANDIDATE DISCLOSURE WITH REGARD TO ADVERTISEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.38A. Procedure for candidate disclosure concerning ads.**

(a) Right of Candidate to Request Disclosure Letter. -- If a candidate for any office on the ballot in North Carolina believes the outcome of an election would be affected by an advertisement that:

(1) Has been published on radio, on television, or in print; and

(2) Mentions the name of any candidate for that office, the candidate so believing may send a disclosure request to another candidate for the same office in accordance with subsection (b) of this section.

(b) Disclosure Request. -- The State Board of Elections shall develop and make available copies of a standard disclosure request form for a candidate who seeks to send such a form in accordance with this section. That disclosure request form shall

do (or provide space for the requesting candidate to do) the following:

(1) Disclose the name of the requesting candidate;

(2) Describe the advertisement about which the request is being made;

(3) Ask the candidate to state approval or disapproval of the advertisement;

(4) Request that the candidate receiving the letter send to the State Board of Elections an immediate response to the disclosure request;

(5) Provide a space for the responding candidate to make a response; and

(6) Notify the candidate that if a response is not received in 10 days the State Board will prepare a public record stating that the candidate did not respond.

Any candidate sending a disclosure request shall do so by certified mail, return receipt requested, and shall notify the State Board of Elections that it has sent the letter.

(c) Response by Candidate; Public Record. -- Any candidate who receives a disclosure request under subsection (b) of this section may respond by registering approval or disapproval of the advertisement, may respond by declining to register approval or disapproval, or may elect not to respond. The State Board of Elections shall record a candidate's response to any disclosure letter sent under subsection (b) of this section and make that record public upon receipt. If the State Board does not receive a response within 10 days after the disclosure request is sent, the State Board shall immediately prepare a public record stating that the candidate did not respond. The State Board of Elections shall notify the news media by press release no later than 21 days before any primary or election the names all candidates who have been sent disclosure requests under this section and their responses.

(d) Rules by State Board of Elections. -- The State Board of Elections shall promulgate rules for the enforcement of this section."

Section 2. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 561

Short Title: Campus Police/Concealed Handguns. (Public)

Sponsors: Senator Odom.

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED CAMPUS POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(d) reads as rewritten:

"(d) Campus Police. -- Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A. Campus police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

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

**North Carolina General Assembly**
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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 561 - CAMPUS POLICE/CONCEALED HANDGUNS -** Senator Odom

Senate Bill 561 would specifically authorize campus police officers to carry concealed weapons while off-duty when authorized by their superior officer in accordance with the standard procedures applicable to other law enforcement officers.

Campus police officers are company police officers who are employed by a constituent institution of The University of North Carolina or any private college or university that is licensed or exempt from licensure as set forth in G.S. 116-15. These officers are required to be sworn, certified by the Criminal Justice Training Standards Commission, and have the same powers as municipal and county police officers on the institutions property, including the power of arrest.

G.S. 14-269(b)(5) permits a sworn law-enforcement officer, when off-duty, to carry a concealed weapon if written regulations authorizing the carrying of concealed weapons has been filed with the clerk of court by the superior officer in charge and the regulations prohibit carrying the weapon while the officer is consuming or under the influence of alcoholic beverages.

This bill would be effective when it becomes law.

S561-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 371

Short Title: International Commercial Conciliation. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

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, respectively, 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 not be held liable in an action for damages resulting from any act or omission in the performance of that individual's role as a conciliator in any proceeding subject to this Part."

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S371-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 371
THIS IS A DRAFT 3-APR-97 16:54:51
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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, respectively, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 372

Short Title: Time Limits for Foreign Service. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE, 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, no time limits apply to securing an endorsement under subdivision (1) of this subsection and to suing out an alias or pluries summons under subdivision (2) of this subsection.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S372-CSRU-001
**PROPOSED COMMITTEE SUBSTITUTE**
SENATE BILL 372
**THIS IS A DRAFT 3-APR-97 18:03:02**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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:

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(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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April 22, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 540 - STANDARDIZE LAW ENFORCEMENT OFFICER DISCIPLINE** - Senator Miller

Senate Bill 540 creates a standardized investigation and disciplinary process for law enforcement officers in the State by providing that no officer may be disciplined without just cause, including firing, and a minimal due process system must exist to hear these types of actions.

This bill creates a new Chapter 17F. G.S. 17F-1 defines covered law enforcement agencies as any State or local law enforcement agency and a law enforcement officer as any officer with the power of arrest and who is required to be certified either by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission.

G.S. 17F-2 says that no law enforcement officer may be discharged, suspended or demoted for disciplinary reasons except for just cause. Most employment in this State is employment at will unless the employing agency has adopted some other standard.

G.S. 17F-3 sets forth the minimal standards an agency must set before disciplinary actions may be taken. These minimal standards include due process procedures including the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the officer's expense, the right to examine witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

G.S. 75F-4 permits the continued use of civil service systems, agency review boards, civilian complaint boards, or personnel boards that meet the minimum

standards or otherwise provide due process to be used in lieu of any new procedure as long as these systems remain in place.

G.S. 17F-5 allows an agency to immediately suspend, with pay, any officer whose continued presence on the job is considered to be a substantial and immediate threat to the welfare of the agency or the public, or if the officer fails to obey a direct order given in conformance with written and disseminated rules and regulations. The rights provided for in G.S. 17F-3 shall apply to a review after the suspension.

This bill would become effective October 1, 1997 and would apply to investigations and disciplinary proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 540*

Short Title: Standardize Law Enf. Discipline. (Public)

Sponsors: Senator Miller; and Reeves.

Referred to: Judiciary.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 17F.

"Investigation and Discipline of Law Enforcement Officers.

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any

disciplinary action against, a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of any disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the officer's expense, the right to examine any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17E-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

Section 2. This act becomes effective October 1, 1997, and applies to investigations and disciplinary proceedings commenced on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 29, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **561** Campus Police/Concealed Handguns
Sequential Referral: None
Recommended Referral: None

S.B. **855** Court Information Remote Access
Sequential Referral: None
Recommended Referral: None

S.B. **864** Update and Revise Trademark Act
Sequential Referral: None
Recommended Referral: None

S.B. **897** Amend Electronic Surveillance Law
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **663** Absentee Voting Changes
Draft Number: PCS 7784
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Sen. Cooper sign

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **371** International Commercial Conciliation

| | |
|---|---|
| Draft Number: | PCS 6672 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

S.B. **372** Time Limits for Foreign Service

| | |
|---|---|
| Draft Number: | PCS 8692 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

## VISITOR REGISTRATION SHEET

JUDICIAL COMMITTEE — 4-29-97

**Name of Committee** — **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| [signature] | NCBA |
| [signature] | NCBA |
| Bill Sloggett | " |
| [signature] | NCAE-CIO |
| Harriet Dial | NCAE |
| John WATTERS | NCDOJ |
| Chris Brewer | NC DOJ |
| [signature] | [signature] |
| [signature] | DSS |
| Paula Wolf. | Covenant with Nc's Children |
| Wendy Mills | SEANC |
| Charlie Hobgood | NC DOJ |

VISITOR REGISTRATION SHEET

Judicial Committee — April 25, 97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Rhonda Little | DHR |
| Jason Mann | Office of Admin Hearings |
| Troy Green | SEANC |
| Daniel Conrad | SEANC |
| Nellie Riley | UNC |
| Carl Headrick | OSP |
| Amy Jo Bain | Smith Anderson |
| Mary Worst | Carolinas AGC |
| Kevin West | PBA - Asheville Chapter |
| Ricky Padgett | PBA - Durham County |
| Susan Yoder | Forsyth Co. PBA |
| John T Daniel | PBA - Probation/Parole |
| Kathryn Queen | Wake Co Board of Elections |
| Judy Hargrove | " " |
| Joan Pia | " " |

# VISITOR REGISTRATION SHEET

Senate Judicial — April 29, 1997

~~SENATE REDISTRICTING COMMITTEE~~ — ~~2/20/97~~

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| H. R. Burkley | NC PBA |
| Bill Johnson | CP&L |
| Gene Upchurch | CP&L |
| [illegible] | NC PBA |
| [illegible] | NC PBA |
| R. Paul Wilms | NCHBA |
| [illegible] | Pinehurst Area Realty |
| MARSHA DAVIS JONES | N.C. Rink Operators |
| [illegible] | [illegible] |
| Mike Carpenter | NCHBA |
| | |
| | |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# APRIL 30, 1997

The Senate Judiciary Committee met on Wednesday, April 30, 1997 at 12:00 noon in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Plyler to explain **Senate Bill 997** - 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 GUILTY OF A CLASS 2 MISDEMEANOR AND IS ALSO CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

Senator Rucho moved to adopt a Proposed Committee Substitute for Senate Bill 997 for discussion. The motion carried by voice vote.

Senator Horton moved to amend the Proposed Committee Substitute by eliminating the misdemeanor charge and keeping the civil liability portion. The motion carried by voice vote.

Senator Soles and Rand moved to amend the Proposed Committee Substitute on Page 2, Line 3. The motion carried by voice vote.

Senator Rand moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Plyler was recognized to explain **Senate Bill 998** - AN ACT TO PROVIDE THAT IT IS A CLASS I MISDEMEANOR FOR A PERSON FRAUDULENTLY TO REPRESENT HIMSELF OR HERSELF AS A CRIME VICTIM.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Page was recognized to explain **Senate Bill 825** - AN ACT RELATING TO FUNDRAISING IN SESSION.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 825 for discussion. The motion carried by voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 3, Line 3 and Page 1, Line 13. (See attached amendment.) The motion carried by voice vote.

Senator Allran moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Shaw was recognized to explain **Senate Bill 409** - AN ACT TO PERMIT AIRPORT LAW ENFORCEMENT AGENCIES TO ENTER COOPERATION AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

Senator Soles, acting Chairman, recognized Senator Cooper to explain **Senate Bill 799** - AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

Senator Cooper moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

Senator Cooper moved to amend the Proposed Committee Substitute on Page 2, Lines 12 and 13 and on Page 1, Lines 8-12. (See attached amendment.) The motion carried by voice vote.

Senator Cooper moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Lee was recognized to explain **Senate Bill 462** - AN ACT TO CLARIFY THAT THE COMMON-LAW PRESUMPTIONS REGARDING DOMICILE APPLY WHEN DETERMINING RESIDENCY FOR TUITION PURPOSES.

Dave Edwards, with the University of North Carolina System, was recognized to speak on the bill.

After further discussion by the Committee, Senator Lee asked that the bill be removed from consideration.

Senator Odom was recognized to explain **Senate Bill 923** - AN ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

Senator Odom moved to amend the bill on Page 3, Lines 16 and 17. The motion carried.

After discussion by the Committee, Senator Odom requested that the bill be held.

Senator Gulley was recognized to explain **Senate Bill 573** - AN ACT TO MAKE CHANGES TO STATUTES CONCERNING BALLOT ACCESS FOR POLITICAL PARTIES.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 573. The motion carried by voice vote.

Senator Ballantine moved to amend the Proposed Committee Substitute on Page 4, Line 28. (See attached copy of amendment.) The motion carried by voice vote.

Senator Gulley moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Hartsell was recognized to explain **Senate Bill 554** - AN ACT TO REMOVE THE SUNSET.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

Senator Rand was recognized to explain **Senate Bill 744** - AN ACT TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT.

Senator Hoyle moved to give the bill a favorable report. The motion carried by voice vote.

There being no further business, the meeting was adjourned at 1:30 p.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

**North Carolina General Assembly**
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April 30, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 997 - IGNORE EMERGENCY WARNING**
Senator Plyler

Senate Bill 997 would provide that a person who ignores a warning regarding personal safety in a disaster situation, places himself or another in danger, and requires an emergency rescue, is guilty of a Class 2 misdemeanor and is also civilly liable for the costs of the rescue effort. A Class 2 misdemeanor, assuming no prior convictions, is punishable by 1-30 days community punishment and/or a fine up to $1,000.

The bill applies to disasters as defined in the N.C. Emergency Management Act: "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."

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 997

Short Title: Ignore Emergency Warning. (Public)

Sponsors: Senators Plyler; and Conder.

Referred to: Judiciary.

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 GUILTY OF A CLASS 2 MISDEMEANOR AND IS ALSO 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) A person is guilty of a Class 2 misdemeanor if:

(1) There is a disaster as defined by G.S. 166-4;

(2) A warning is 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 regarding personal safety;

(3) The person willfully ignores the warning: (i) to engage 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;

(4) As a result places himself or herself or another in danger; and

(5) A governmental rescue effort is undertaken on the endangered person's behalf.

(b) A person who violates subsection (a) of this section is civilly liable to any governmental agency conducting a rescue on the endangered person's behalf for the cost of the rescue effort."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S997-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
S997
THIS IS A DRAFT 30-APR-97 00:05:19
ATTENTION: 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 GUILTY OF A CLASS 2 MISDEMEANOR AND IS ALSO 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 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 G.S. 166A-5, 166A-7, or 166A-8, is guilty of a Class 2 misdemeanor 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.

(b) A person who violates subsection (a) of this section is civilly liable to any governmental agency conducting a rescue on the endangered person's behalf for the cost of the rescue effort."

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **997** Ignore Emergency Warning

| | |
|---|---|
| Draft Number: | PCS 8697 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

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April 30, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 998 - FRAUD/"PRETEND" CRIME VICTIM**
Senator Plyler

Senate Bill 998 would make it unlawful for a person, with the intent to perpetrate a hoax, to falsely represent himself as a crime victim, causing someone else to reasonably believe and report that fact to law enforcement. A copy of the current law regarding false police reports, which is somewhat different because of the purpose statement, is attached.

Since the offense is a misdemeanor for which there is no stated classification, pursuant to G.S. 14-3 the offense would be punishable as a Class 1 misdemeanor. Assuming no prior convictions, a Class 1 misdemeanor is punishable by 1-45 days community punishment and/or a fine in the discretion of the court.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 14-225. False reports to law enforcement agencies or officers.**

Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 825

Short Title: Contributions in Session. (Public)

Sponsors: Senators Page; East, Forrester, Garwood, and Webster.

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO FUND-RAISING IN SESSION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 163-278.13A is repealed.

(b) Article 22A of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) 'Limited contributee' means a member of the Council of State, a member of the General Assembly, or a political committee, the purpose of which is to assist a member or members of the Council of State or General Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die, or recesses or adjourns for more than 10 days.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall solicit

a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that that entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

Section 2. This act becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 825
Proposed Committee Substitute -- S825-PCSRR-005

Short Title: Candidate Accountability. (Public)

Sponsors:

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CANDIDATE DISCLOSURE WITH REGARD TO ADVERTISEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

" § 163-278.38A. Procedure for candidate disclosure concerning ads.

(a) Definitions. -- As used in this section:

(1) 'Requesting candidate' means a candidate for any office on the ballot in North Carolina who sends a disclosure request to a receiving candidate according the the provisions of subsection (b) of this section.

(2) 'Receiving candidate' means a candidate for any office on the ballot in North Carolina who is sent a disclosure request according to the provisions of subsection (b) of this section.

(3) 'Disclosure request' means a form designed by the State Board of Elections to be sent by a requesting candidate to a receiving candidate. The State Board of Elections shall develop such a form, providing a space for the requesting candidate to disclose his

or her name and describe the advertisement about which the request is being made. The form shall have a space in which the receiving candidate shall be asked to register approval or disapproval of that advertisement. The form shall not contain a space for the receiving candidate to make additional comments. On the form, the State Board of Elections shall ask that the receiving candidate send the disclosure request form immediately to the State Board. The State Board shall notify the receiving candidate on the form that if the State Board does not receive a response within 10 days after the receiving candidate receives the disclosure request, the State Board will prepare a public record stating that the receiving candidate did not respond.

(b) Right of Requesting Candidate to Send Disclosure Request. -- If a requesting candidate believes the outcome of an election would be affected by an advertisement that:

(1) Has been published on radio, on television, or in print; and

(2) Mentions the name of any candidate for that office,

the requesting candidate may send a disclosure request to a receiving candidate for the same office. Any requesting candidate sending a disclosure request shall do so by certified mail, return receipt requested. The requesting candidate shall notify the State Board of Elections when the disclosure request has been sent and when the return receipt has been received.

(c) Response by Receiving Candidate; Public Record. -- Any receiving candidate who receives a disclosure request under subsection (b) of this section may respond by registering on the disclosure request form approval or disapproval of the advertisement, may respond by declining to register approval or disapproval, or may elect not to respond. The State Board of Elections shall record a receiving candidate's response to any disclosure letter sent under subsection (b) of this section and make that record public upon the State Board's receipt of the receiving candidate's response. The State Board shall not include in its record any comments of the receiving candidate beyond approval, disapproval, declination to approve or disapprove, or nonresponse. If the State Board does not receive a response within 10 days after the receiving candidate receives the disclosure request, the State Board shall immediately prepare a public record stating that the receiving candidate did not

respond. The State Board of Elections shall notify the news media by press release at least 21 days before any primary or election the names all receiving candidates who have been sent disclosure requests under this section and their responses. The State Board shall update that press release once a week during the final three weeks before the primary or election.

(d) Rules by State Board of Elections. -- The State Board of Elections shall promulgate rules for the enforcement of this section."

Section 2. This act becomes effective January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE 4-30-97

S. B. No. 825 Amendment No. _____

(to be filled in by Principal Clerk)

~~Rep.~~ )
) Rand
Sen. )

moves to amend the bill on page 1, line 13

by deleting the term "~~the~~the" and substituting "to the"; and

on page 3, line 3, by inserting after the word "names" the word "of".

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **825** Contributions in Session

| | |
|---|---|
| Draft Number: | PCS 8696 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment:

1. CHANGES SHORT TITLE
2. I will take to Sen. Cooper

**North Carolina General Assembly**
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April 30, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 409 - AIRPORT LAW ENFORCEMENT**
Senator Shaw of Guilford

Senate Bill 409 would permit airport law enforcement agencies to enter cooperation agreements with other law enforcement agencies.

The bill amends G.S. 160A-288, regarding cooperation between law enforcement agencies. The statute provides that the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of the State if so requested in writing by the head of the requesting agency. While working with the requesting agency, an officer has the same jurisdiction and powers as the officers of the requesting agency. For purposes of the statute, law-enforcement agency is defined as "only a municipal police department, a county police department, or a sheriff's department." Presently under 160A-288(d), campus police are considered the equivalent of a municipal police department. Senate Bill 409 would make airport law enforcement agencies operated by a municipality the equivalent of a municipal police department for purposes of the statute regarding cooperation with other law enforcement agencies.

The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 409

Short Title: Airport Law Enforcement. (Public)

Sponsors: Senator Shaw of Guilford.

Referred to: Judiciary.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT AIRPORT LAW ENFORCEMENT AGENCIES TO ENTER COOPERATION AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E.~~ 74E; and

(3) Law enforcement agencies operated by a municipality pursuant to G.S. 63-53(2)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 799

Short Title: Discipline Disclosure Act. (Public)

Sponsors: Senators Cooper and Hoyle.

Referred to: Judiciary.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by adding a new section to read:

"**§ 132-1.5. Public employee's personnel records.**

(a) In order to maintain the confidence in the fitness and performance of public employees who work in the public interest and are paid from public funds, it is the policy of this State to have open access to employee records that pertain to the employee's job performance and qualifications for that job.

(b) Each department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the public employee is currently assigned. Such information is a public record.

(c) A public employee's employment application and any resume, personal history, recommendation, or other information submitted by or on behalf of the public employee in support thereof, are public records.

(d) Records related to any personnel action imposed upon a public employee, including, but not limited to, separation, suspension, demotion, reprimand, warning, or transfer, are public records. At a minimum, every supervisor shall place in the public employee's personnel record a written summary of the personnel action imposed upon the public employee, including the circumstances that led to the personnel action, the nature of the action taken, and the effective dates of the action.

(e) The names of public employees who provide information confidentially to persons investigating whether to bring a personnel action against a public employee are not public records unless the names are otherwise publicly disclosed.

(f) All records related to commendations or awards bestowed upon public employees are public records; provided, however, that such records may be withheld from public inspection until the commendation or award has been received by or bestowed upon the public employee.

(g) Once a public employee has been the subject of a personnel action, including, but not limited to, separation, suspension, demotion, reprimand, warning, or transfer, all records of that public employee's performance, including evaluations or appraisals, are public records.

(h) Subject only to rules and regulations for the safekeeping of the records, adopted by the appropriate oversight body, every person having custody of such personnel records shall permit them to be inspected and examined during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining, or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(i) For purposes of this section, 'public employee' shall mean any employee, former employee, or applicant for employment by any department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority."

Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), and 162A-6.1 are repealed.

Section 3. G.S. 115C-321 reads as rewritten:

"**§ 115C-321. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in G.S. 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel

file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The superintendent and other supervisory personnel;

(3) Members of the local board of education and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record."

Section 4. G.S. 17C-7(c) reads as rewritten:

"(c) Any papers, documents, or other records which become the property of the Commission that are placed in the criminal justice officer's personnel file maintained by the Commission shall be subject to the same disclosure requirements as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of personnel records."

Section 5. G.S. 74E-5(b) reads as rewritten:

"(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 for other personnel records."

Section 6. G.S. 115D-29 reads as rewritten:

**"§ 115D-29. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in this ~~Article,~~ Article or in G.S. 132-1.5, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record."

Section 7. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S799-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 799
THIS IS A DRAFT 29-APR-97 23:25:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Discipline Disclosure Act. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO BRING MORE OPENNESS TO THE PERFORMANCE OF PUBLIC EMPLOYEES BY PROVIDING GREATER ACCESS TO PERSONNEL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.5. Public employee's personnel records.

(a) In order to maintain the confidence in the fitness and performance of public employees who are paid from public funds, it is the policy of this State to have open access to employee records that pertain to the employee's job performance and qualifications for that job.

(b) Each department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority shall maintain a record of each of its employees, showing the following information with respect to each such public employee: name, age, date of original employment or appointment to the service, current position, title, current

salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the public employee is currently assigned. Such information is a public record.

(c) Information contained in a public employee's employment application that demonstrates the employee's qualifications for the position held by a public employee are public records. Such information includes, but is not limited to, educational degrees, previous employment experience and the dates the public employee held previous relevant employment, military records and the scores on aptitude tests taken by the public employee. Letters of recommendation are public records so long as the person who writes the recommendation does not object in writing to public disclosure of the letter of recommendation.

(d) Records related to serious disciplinary actions imposed on a public employee are public records. As used in this Article, serious disciplinary actions are dismissal, demotion, or suspension. At a minimum, every supervisor shall place in the public employee's personnel record a written summary of the serious disciplinary action imposed on the public employee, including the circumstances that led to the disciplinary action, the nature of the disciplinary action taken, and the effective dates of the disciplinary action.

(e) Information identifying the public employee who provides information confidentially to persons investigating whether to bring a disciplinary action against another public employee is not a public record.

(f) All records related to official commendations or awards bestowed upon public employees are public records; provided, however, that such records may be withheld from public inspection until the commendation or award has been received by or bestowed upon the public employee.

(g) Once two serious disciplinary actions have been imposed on a public employee within a three-year period, all records of that public employee's performance, including evaluations or appraisals, are public records.

(h) Subject only to rules and regulations for the safekeeping of the records, adopted by the appropriate oversight body, every person having custody of such personnel records shall permit them to be inspected and examined during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining, or copying the same shall have a right to

compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(i) Any person employed by a public agency acting in good faith to comply with the disclosure requirements of this section is not subject to liability.

(j) Any public employee may waive the confidentiality of the employee's personnel file by making a written request that the information in the file, or the records obtained as a result of an investigation of the employee, be made public.

(k) For purposes of this section, 'public employee' shall mean any employee, former employee, or applicant for employment by any department, agency, institution, commission, or bureau of the State of North Carolina, any employee of The University of North Carolina or its constituent institutions, any public hospital employee or any employee of any county or municipality, local board of education, or area mental health authority."

Section 2. G.S. 115C-319, 115C-320, 115D-27, 115D-28, 122C-158(a), 122C-158(b), 126-23, 153A-98(a), 153A-98(b), 160A-168(a), 160A-168(b), and 162A-6.1 are repealed.

Section 3. G.S. 115C-321 reads as rewritten:

"**§ 115C-321. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in G.S. 132-1.5 or in this Chapter, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The superintendent and other supervisory personnel;

(3) Members of the local board of education and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any

applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record."

Section 4. G.S. 115C-325(b) reads as rewritten:

"(b) Personnel Files. -- The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to ~~other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.~~ public only as provided for in G.S. 132-1.5."

Section 5. G.S. 17C-7(c) reads as rewritten:

"(c) Any papers, documents, or other records which become the property of the Commission that are placed in the criminal justice officer's personnel file maintained by the Commission shall be subject to the same disclosure requirements as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 regarding the privacy of personnel records."

Section 6. G.S. 74E-5(b) reads as rewritten:

"(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in ~~Chapters 126, 153A, and 160A of the General Statutes~~ G.S. 132-1.5 for other personnel records."

Section 7. G.S. 115D-29 reads as rewritten:

"**§ 115D-29. Confidential information in personnel files; access to information.**

All information contained in a personnel file, except as otherwise provided in this ~~Article,~~ Article or in G.S. 132-1.5, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution,

nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record."

Section 8. This act becomes effective January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE 4-30-97

S. B. No. 799 · PCS - 002 Amendment No. _____

(to be filled in by Principal Clerk)

Rep. )
)
Sen. )

moves to amend the bill on page 2, line S 12+13

by ~~[illegible]~~ REWRITING THE LINES TO READ:

" HELD PREVIOUS RELEVANT EMPLOYMENT AND MILITARY RECORDS. * LETTERS "

Removing lines 8 - 12 on page 1
& renumbering lettering accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

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April 30, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 462 - AMEND RESIDENCY FOR TUITION PURPOSES**
Senator Lee

Senate Bill 462 amends the provisions for determining resident status for tuition purposes.

Section 1 of the bill amends G.S. 116-143.1(b) to provide that, when determining whether an applicant qualifies as a N.C. resident for tuition purposes, the classifying institution must ascertain legal residence using common-law principles of domicile unless expressly prohibited under this statute. Various cases have defined domicile as that place where a person has a true, fixed, and permanent home and principal establishment, and to which the person has the intention of returning. It is also defined as the established, fixed, permanent, or ordinary dwelling-place or place of residence of a person, as distinguished from a temporary and transient, though actual, place of residence. Although domicile and residence are not synonymous, domicile is usually considered to be inclusive of residence, and although a person may have only one domicile, he may have more than one residence. A 1985 Attorney General Opinion held that a person has domicile . . . at a place if he (1) has abandoned his prior home (2) has a present intent to make that place his home, and (3) has no intention presently to leave the place.

Section 2 of the bill amends G.S. 116-143.1(e) to provide that, notwithstanding any other provision of law, common-law principles concerning the domicile of a minor child apply. A minor's domicile is generally determined to be the same as that of his parents, surviving parent, or guardian. A minor cannot establish a domicile different from his parents, surviving parent or guardian unless the minor is emancipated. For an unemancipated student under 18 the domicile of his parents, surviving parent or guardian controls for purposes of the student's entitlement to enroll in school. An emancipated minor may establish a domicile separate from his parents. The most common act which emancipates a minor is marriage.

The bill would be effective when it becomes law, and would apply to academic terms commencing on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 462

Short Title: Amend Residency for Tuition Purposes. (Public)

Sponsors: Senator Lee.

Referred to: Judiciary.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE COMMON-LAW PRESUMPTIONS REGARDING DOMICILE APPLY WHEN DETERMINING RESIDENCY FOR TUITION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-143.1(b) reads as rewritten:

"(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to ~~his or her~~ the person's classification as a resident for tuition purposes. Every applicant for admission or resident status shall be required to make a statement as to ~~his~~ the applicant's length of residence in the State. When determining whether an applicant qualifies as a resident for tuition purposes, a classifying institution shall ascertain legal residence using the common-law principles of domicile unless expressly prohibited under this section of the General Statutes."

Section 2. G.S. 116-143.1(e) reads as rewritten:

"(e) When an individual presents evidence that the individual has living parent(s) or a court-appointed guardian of the person, the legal residence of ~~such~~ the parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or

reregistering at the institution of higher education at which resident status for tuition purposes is sought. Notwithstanding any other provision of law, the common-law principles of domicile concerning the domicile of a minor shall apply to this subsection."

Section 3. This act is effective when it becomes law and applies to academic terms commencing on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 923

Short Title: Commercial Realtor Lien Act. (Public)

Sponsors: Senators Odom; Allran, Carpenter, and Foxx.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 93A is amended by adding a new Article to read:

"ARTICLE 6.

"Commercial Real Estate Brokers' Lien Act.

"**§ 93A-90. Short title.**

This Article may be known as the 'Commercial Real Estate Brokers' Lien Act.'

"**§ 93A-91. Definitions.**

As used in this Article, the following terms mean:

(1) 'Commercial real estate', any real estate other than real estate containing one to four residential units, real estate on which no buildings or structures are located, or real estate classified as agricultural and horticultural property for tax assessment purposes. Commercial real estate does not include single-family residential units including condominiums, townhouses, or homes in a subdivision when that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real estate containing more than four residential units;

(2) 'Owner', the owner of record of commercial real estate;

(3) 'Real estate broker' and 'real estate salesperson', as such terms are defined in G.S. 93A-2.

"**§ 93A-92. Broker's lien for compensation.**

Any licensed real estate broker shall have a lien, upon commercial real estate or any interest in that commercial real estate, in the amount that the real estate broker is due:

(1) Under a written instrument signed by the owner of an interest in the commercial real estate or signed by the owner's duly authorized agent; or

(2) Under a written instrument signed by a prospective buyer or prospective tenants or signed by their duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate.

"**§ 93A-93. Lien notice, content.**

A lien notice, for purposes of this Article, shall state:

(1) The name of the claimant;

(2) The name of the owner;

(3) A description of the property upon which the lien is being claimed;

(4) The amount for which the lien is claimed; and

(5) The real estate license number of the real estate broker.

The notice of lien shall be signed by the real estate broker, and the broker shall attest that the information contained in the notice is true and accurate as to his knowledge and belief.

"**§ 93A-94. When broker's lien attaches to commercial real estate.**

A real estate broker's lien authorized by this Article attaches to the commercial real estate, or an interest in the commercial real estate, when the real estate broker records a notice of the lien in the office of the register of deeds of the county in which the real property, or any interest in the real property is located, if such lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to such real estate broker's lien, except that:

(1) If payment to a real estate broker is due in installments and a portion of the payment is due after the conveyance or transfer of the commercial real estate, any claim for a lien for installment payments due after the transfer or conveyance of the real estate may be recorded any time after the transfer or conveyance of the commercial real estate but shall be recorded before the date on which the payment is due. This lien shall only be effective as a lien against the commercial real estate to the extent moneys are still owed to the transferor by the transferee. A single claim for a lien recorded before the transfer or conveyance of the commercial real estate, claiming all moneys due under an installment payment agreement, is not valid or enforceable to the extent of the payments due after the transfer or conveyance. The lien attaches for purposes of this paragraph when the claim for lien is recorded;

(2) In the case of a lease, the claim for lien shall be recorded within 90 days after the tenant takes possession of the leased property, unless written notice of the intention to sign the lease is personally served on the real estate broker entitled to claim a lien at least 10 days before the date of the intended signing of the lease, then the claim for lien shall be recorded before the date indicated for the signing of the lease. The lien attaches for purposes of this subdivision when the claim for lien is recorded; or

(3) If the real estate broker has a written agreement with a prospective buyer as provided in subdivision (2) of G.S. 93A-92, then the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer of the commercial real estate and records a notice of the lien within 90 days after the purchase or other conveyance or transfer to the buyer in the office of the register of deeds in the county in which the commercial real estate, or any interest in the commercial real estate, is located.

"**§ 93A-95. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the register of deeds and a condition occurs that would preclude the broker from receiving compensation under the terms of the real estate broker's written agreement, the real estate broker shall record and provide the owner of record a written release or satisfaction of the lien.

"**§ 93A-96. Broker to mail copy of notice of lien to owner by certified mail.**

Any real estate broker who attaches a lien on commercial property pursuant to the provisions of this Article shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail. The real estate broker's lien is void if the broker does not record the lien as provided in this Article.

"**§ 93A-97. Enforcing lien.**

A real estate broker may bring suit to enforce a lien which attaches pursuant to the provisions of this Article in any court of competent jurisdiction in the county where the property is located by filing a verified petition that the lien has been recorded. Unless the claim is based upon an option to purchase the commercial real estate, the broker claiming the lien shall commence proceedings within six months after recording the lien and failure to commence proceedings within the six months shall extinguish the lien. A claim for the same lien, extinguished pursuant to this section and G.S. 93A-99, may not be asserted in any subsequent proceeding.

"**§ 93A-98. Petition, content, parties' foreclosure action, procedure.**

(a) A petition filed pursuant to the provisions of this section and G.S. 93A-97 shall contain:

(1) A statement of the terms of the contract or agreement on which the lien is based;

(2) The date when the contract or agreement was made;

(3) A description of the services performed;

(4) The amount due and unpaid;

(5) A description of the property that is subject to the lien; and

(6) Any other facts necessary for a full understanding of the rights of the parties.

The plaintiff shall file the action against all known parties who have an interest in the real estate. A foreclosure action for a lien claimed pursuant to this Article shall be brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

(b) Valid prior recorded liens or mortgages shall have priority over a real estate broker's lien.

**"§ 93A-99. Lien extinguished for broker failing to file suit or answer in pending suit within 30 days after service on owner.**

If a broker claiming a lien pursuant to this Article fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The provisions of this section shall not extend any other deadline provided by law or the filing of any pleadings or for the foreclosure of any lien governed by this Article.

**"§ 93A-100. Satisfaction or release of lien.**

If a claim for lien has been filed pursuant to the provisions of this Article with the register of deeds and the claim has been paid in full or if the lienor fails to institute a suit to enforce the lien within the time as provided by law, the real estate broker shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

**"§ 93A-101. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

**"§ 93A-102. Escrow account.**

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a claim for a real estate broker's lien has been filed with the register of deeds and that lien would prevent the closing of a transaction or conveyance, an escrow account shall be established with the clerk of the superior court in the county in which the commercial real estate is located from the proceeds of the transaction or conveyance in an amount sufficient to release the claim for the lien. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to close a transaction. The proceeds held in that escrow account shall be held by the clerk until the parties' rights to the escrowed funds have been determined by:

(1) Written agreement of the parties;

(2) A final judgment of the court of competent jurisdiction; or

(3) Other process as may be agreed to by the parties.

If funds sufficient to satisfy the amount claimed in the lien have been deposited in the escrow account, the real estate broker shall release the claim for the lien on the real estate.

**"§ 93A-103. Broker to give written notice of right to lien on premises at time of closing.**

Any real estate broker who proposes to assert a lien pursuant to this Article shall be prohibited from asserting the lien unless, at the time of the closing for the transaction, the broker has given written notice to the purchaser of the commercial real estate that payment of the broker's fee is due and that he or she is entitled to a lien on the premises."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 923 Amendment No. _____

(to be filled in by Principal Clerk)

Rep. )
Sen. ) ODOM

moves to amend the bill on page 3, lines 16 AND 17

by INSERTING THE FOLLOWING SENTENCE BETWEEN THE LINES:

"A FILING FEE OF $50 SHALL BE PAID WHEN THE CLAIM OF LIEN IS FILED."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 573*

Short Title: Ballot Access Changes. (Public)

Sponsors: Senator Gulley.

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATUTES CONCERNING BALLOT ACCESS FOR POLITICAL PARTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-96 reads as rewritten:

"**§ 163-96. 'Political party' defined; creation of new party.**

(a) Definition. -- A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the ~~first day of June~~ second Thursday in July preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith

determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: 'THE UNDERSIGNED REGISTERED VOTERS IN ..... COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ..... AND WHOSE STATE CHAIRMAN IS ....., RESIDING AT..... AND WHO CAN BE REACHED BY TELEPHONE AT..... THE SIGNERS OF THIS PETITION ~~INTEND TO ORGANIZE A NEW POLITICAL PARTY~~ DESIRE THAT A NEW POLITICAL PARTY BE ORGANIZED TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION.'

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or

(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth business day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall require a fee of five cents (5¢) for each signature appearing and shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within ~~two weeks~~ fifteen business days from the date such petitions are presented and the required fee ~~received.~~ received. Notwithstanding the previous sentence, the county board may extend its deadline for verifying the signatures for a reasonable length of time, if meeting the deadline is unduly burdensome and extending it will not disadvantage the petitioners."

Section 2. G.S. 163-97.1 reads as rewritten:

"**§ 163-97.1. Voters affiliated with expired political party.**

~~The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated" designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-74(b).~~ Any voter registered with a political party shall be allowed to retain that affiliation even if that party loses its status as a political party under the provisions of G.S. 163-97. Unless the voter indicates an intention otherwise, the county board of elections shall carry that voter on its registration lists as a member of the expired party."

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

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April 24, 1997

TO: Senator Roy A. Cooper, Chair, Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: PCS for Senate Bill 573 – Ballot Access Changes.

The PCS for Senate Bill 573, introduced by Senator Gulley, would make six changes to the ballot access laws relating to new political parties. The changes are designed to remove barriers and to ease administrative burdens on the boards of elections.

The bill as introduced would do the following:

1. Move to the second Thursday in July before the general election the deadline for new parties to file their petitions for ballot access. Currently, the deadline is June 1.

2. Give county boards of elections 15 business days to verify all the names on a new party's petitions, and allow them to extend their deadline if there is no disadvantage to the petitioners. Currently, county boards of elections are given two weeks to verify all the names on a new party's petitions, regardless of whether the party's qualifying deadline, or any other deadline of concern to the party, is imminent.

3. Change the petition wording prescribed in the statute so that its final sentence says: "THE SIGNERS OF THIS PETITION DESIRE THAT A NEW POLITICAL PARTY BE ORGANIZED TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION." Currently, the final sentence says: "THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

4. Allow voters affiliated with an expired political party to keep that designation on the registration books. Currently, when a party loses its ballot status, boards of elections are required to go to the expense of changing the records of voters affiliated with that party to "Unaffiliated."

The bill was recommended by the LRC Study Committee on Election Laws Reform.

**The PCS adds three things to the original bill:**

- **A later deadline for a new party to nominate candidates. The old deadline was July 1. Since the original bill set the deadline for the party to qualify at the second Thursday in July, the PCS makes the conforming change of moving the candidate deadline to August 1.**
- **Removes the 5-cent per name fee for filing petitions. The requirement has been struck by the courts and is not being enforced.**
- **Removes the notarization requirement for petition names. This requirement, too, has been struck by the courts and in not being enforced.**

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

# CURRENT NORTH CAROLINA LAW ON BALLOT ACCESS.

| | Democrats or Republicans | New Party | Unaffiliated | Write-In |
|---|---|---|---|---|
| **When Party Must Qualify to Get on Ballot** | N/A | June 1 | N/A | N/A |
| **What Party Must Do to Qualify to Get (or Stay) on Ballot** | Get at least 10% of last statewide vote for Gov. or Pres. | Get signatures equal to 2% of last statewide vote for Gov., with at least 200 of those names from each congressional district. (A requirement of paying 5 cents per name has been held unconstitutional because not applied uniformly.) | N/A | N/A |
| **When Must Candidates File** | Between 1st Monday in January and 1st Monday in February of election year. | Filing not required—Candidates of new party are nominated at convention. | Last Friday in June. | 90 days before general election. (Early August.) |
| **What statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); ***or***<br>• Get signatures on petition of 10% of that party's voters in the state, or 10,000 of all voters in state, whichever is greater. | N/A | Get signatures of 2% of registered voters in State. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; ***and***<br>• Get signatures of 500 registered voters in the State.<br>(Enforcement of a requireme of paying 5 cents per name h been suspended due to its invalidation for new parties.) |
| **What non-statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); ***or***<br>• Get signatures on petition of 10% of that party's voters in the area voting for the office, or 200 of all voters in that area, whichever is greater. | N/A | Get signatures of 4% of voters in district. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; ***and***<br>• Get signatures of 500 registered voters in a multi-county district, or 100 voters in a county or sub-county electorate, with at least 1% of any electorate that has fewer than 5,000 registered voters.<br>(Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) |
| **When candidates must be nominated** | Tuesday after 1st Monday in May (or, if runoff, 4 weeks later). | July 1 | Last Friday in June (same as filing). | 90 days before general election (same as filing). |
| **How candidate nominated** | By voters in primary. | By party in convention. | Same as filing. | Same as filing. |
| **Special Qualifications for Candidate** | Must be registered with party and not have changed party registration in last 90 days. | Need not be registered with party.<br>May have been defeated in another party's primary for same office. | May not have been defeated in a party's primary for the same office. | May not have been defeated in a party's primary for the same office. |

March 26, 1997

# SENATE BILL 573 AS INTRODUCED.

| | Democrats or Republicans | New Party | Unaffiliated | Write-In |
|---|---|---|---|---|
| **When Party Must Qualify to Get on Ballot** | N/A | **2nd THURS. IN JULY.** | N/A | N/A |
| **What Party Must Do to Qualify to Get (or Stay) on Ballot** | Get at least 10% of last statewide vote for Gov. or Pres. | Get signatures equal to 2% of last statewide vote for Gov., with at least 200 of those names from each congressional district. (Notarization and a charge of 5 cents per name has been held unconstitutional because not applied uniformly.) | N/A | N/A |
| **When Must Candidates File** | Between 1st Monday in January and 1st Monday in February of election year. | Filing not required—Candidates of new party are nominated at convention. | Last Friday in June. | 90 days before general election. (Early August.) |
| **What statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); *or*<br>• Get signatures on petition of 10% of that party's voters in the state, or 10,000 of all voters in state, whichever is greater. | N/A | Get signatures of 2% of registered voters in State. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; *and*<br>• Get signatures of 500 registered voters in the State.<br>(Enforcement of a requireme of paying 5 cents per name h been suspended due to its invalidation for new parties.) |
| **What non-statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); *or*<br>• Get signatures on petition of 10% of that party's voters in the area voting for the office, or 200 of all voters in that area, whichever is greater. | N/A | Get signatures of 4% of voters in district. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; *and*<br>• Get signatures of 500 registered voters in a multi-county district, or 100 voters in a county or sub-county electorate, with at least 1% of any electorate that has fewer than 5,000 registered voters.<br>(Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) |
| **When candidates must be nominated** | Tuesday after 1st Monday in May (or, if runoff, 4 weeks later). | July 1 | Last Friday in June (same as filing). | 90 days before general election (same as filing). |
| **How candidate nominated** | By voters in primary. | By party in convention. | Same as filing. | Same as filing. |
| **Special Qualifications for Candidate** | Must be registered with party and not have changed party registration in last 90 days. | Need not be registered with party.<br>May have been defeated in another party's primary for same office. | May not have been defeated in a party's primary for the same office. | May not have been defeated in a party's primary for the same office. |



**CAPS AND BOLDFACE INDICATES CHANGE FROM CURRENT LAW.**

# PCS for SENATE BILL 573.

| | Democrats or Republicans | New Party | Unaffiliated | Write-In |
|---|---|---|---|---|
| **When Party Must Qualify to Get on Ballot** | N/A | **2nd THURS. IN JULY.** | N/A | N/A |
| **What Party Must Do to Qualify to Get (or Stay) on Ballot** | Get at least 10% of last statewide vote for Gov. or Pres. | Get signatures equal to 2% of last statewide vote for Gov., with at least 200 of those names from each congressional district. **NOTARIZATION & 5 CENT PER NAME CHARGE REPEALED.** | N/A | N/A |
| **When Must Candidates File** | Between 1st Monday in January and 1st Monday in February of election year. | Filing not required—Candidates of new party are nominated at convention. | Last Friday in June. | 90 days before general election. (Early August.) |
| **What statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); *or*<br>• Get signatures on petition of 10% of that party's voters in the state, or 10,000 of all voters in state, whichever is greater. | N/A | Get signatures of 2% of registered voters in State. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; *and*<br>• Get signatures of 500 registered voters in the State.<br>(Enforcement of a requireme of paying 5 cents per name h been suspended due to its invalidation for new parties.) |
| **W[illegible]n-statewide candidates must do to file.** | • Pay filing fee (generally 1% of annual salary of office sought); *or*<br>• Get signatures on petition of 10% of that party's voters in the area voting for the office, or 200 of all voters in that area, whichever is greater. | N/A | Get signatures of 4% of voters in district. (Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) | • Declare intention to be a candidate; *and*<br>• Get signatures of 500 registered voters in a multi-county district, or 100 voters in a county or sub-county electorate, with at least 1% of any electorate that has fewer than 5,000 registered voters.<br>(Enforcement of a requirement of paying 5 cents per name has been suspended due to its invalidation for new parties.) |
| **When candidates must be nominated** | Tuesday after 1st Monday in May (or, if runoff, 4 weeks later). | **AUGUST 1** | Last Friday in June (same as filing). | 90 days before general election (same as filing). |
| **How candidate nominated** | By voters in primary. | By party in convention. | Same as filing. | Same as filing. |
| **Special Qualifications for Candidate** | Must be registered with party and not have changed party registration in last 90 days. | Need not be registered with party.<br>May have been defeated in another party's primary for same office. | May not have been defeated in a party's primary for the same office. | May not have been defeated in a party's primary for the same office. |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 573*
Proposed Committee Substitute -- S573-PCSRR-001

Short Title: Ballot Access Changes. (Public)

Sponsors:

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO STATUTES CONCERNING BALLOT ACCESS FOR POLITICAL PARTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-96 reads as rewritten:

"**§ 163-96. 'Political party' defined; creation of new party.**

(a) Definition. -- A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North

Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the ~~first day of June~~ second Thursday in July preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: 'THE UNDERSIGNED REGISTERED VOTERS IN ..... COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ..... AND WHOSE STATE CHAIRMAN IS ....., RESIDING AT..... AND WHO CAN BE REACHED BY TELEPHONE AT..... THE SIGNERS OF THIS PETITION ~~INTEND TO ORGANIZE A NEW POLITICAL PARTY~~ DESIRE THAT A NEW POLITICAL PARTY BE ORGANIZED TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION.'

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

~~The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:~~

~~(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity~~

~~of the signatures by appropriate notation attached to the petition, or~~

~~(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.~~

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth business day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. ~~Provided the petitions are timely submitted, the chairman of the county board of elections shall require a fee of five cents (5¢) for each signature appearing and shall proceed to examine and verify the signatures under the provisions of this subsection.~~ Verification shall be completed within ~~two weeks~~ fifteen business days from the date such petitions are ~~presented and the required fee received.~~ presented. Notwithstanding the previous sentence, the county board may extend its deadline for verifying the signatures for a reasonable length of time, if meeting the deadline is unduly burdensome and extending it will not disadvantage the petitioners."

Section 2. G.S. 163-97.1 reads as rewritten:

"**§ 163-97.1. Voters affiliated with expired political party.**

~~The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated" designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-74(b).~~ Any voter registered with a political party shall be allowed to retain that affiliation even if that party loses its status as a political party under the provisions of G.S. 163-97. Unless the voter indicates an intention otherwise, the county board of elections shall carry that voter on its registration lists as a member of the expired party."

Section 3. G.S. 163-98 reads as rewritten:

"**§163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of ~~July~~ August prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE 4-30-97

S. B. No. 573 Amendment No. _____

(to be filled in by Principal Clerk)

Rep. )
Sen. ) BALLANTINE

moves to amend the bill on page 4, line 28

by adding at the end of that line the following sentence:

"Any candidate nominated by the party ~~[illegible]~~ shall be ~~a member of~~ affiliated ~~with the party~~ with that party as a ~~voter~~ registered voter."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **573** Ballot Access Changes

| | |
|---|---|
| Draft Number: | PCS 4593 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

**North Carolina General Assembly**
**Legislative Services Office**

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Raleigh, NC 27603-5925
(919) 733-2578

April 29, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **SENATE BILL 554 - PATERNITY/PARENTAL SUPPORT**
Senators Hartsell and Rand

Chapter 424 of the 1995 Session Laws (copy attached) amended G.S. 49-14(c) to allow the filing of a civil action to establish paternity of an out of wedlock child after the death of the putative father. If such a suit was commenced, but the putative father dies before a judgment was entered, the court has authority to enter a judgment establishing paternity, despite the death of the putative father. To guard against the filing of stale and fraudulent claims, the civil action must be filed within one year of the putative father's death or within 90 days after the first publication of notice to creditors to present claims against the decedent's estate, whichever is less. Chapter 424 further amended G.S. 49-14(d) to prohibit the court from establishing paternity after the death of the putative father without evidence from blood or a genetic marker test. The act became effective October 1, 1995 and is scheduled to expire on October 1, 1998. Senate Bill 554 would remove the sunset provision.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

CHAPTER 424
SENATE BILL 836

AN ACT TO ENHANCE PARENTAL SUPPORT OF CHILDREN BY AMENDING THE LAW PERTAINING TO CIVIL ACTIONS TO ESTABLISH PATERNITY.

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.

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.

**North Carolina General Assembly**
**Legislative Services Office**

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April 29, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **SENATE BILL 744 - GRANDPARENT'S CHILD SUPPORT CLARIFICATION**
Senator Rand

Senate Bill 744 would clarify the law regarding grandparent's liability for certain child support. Chapter 518 of the 1995 Session Laws amended G.S. 50-13.4(b) to provide that, absent proof that the circumstances warrant otherwise, parents of a minor unemancipated child who is the custodial or noncustodial parent of a child share the primary liability for the grandchild's support with the minor parent, until the minor parent reaches the age of 18 or becomes emancipated. Senate Bill 744 makes a conforming change regarding when a judge is not authorized to order support. The bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 744*

Short Title: Grandparents' Child Support Clarification. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

April 7, 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.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

**REVISED****

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **799** Discipline Disclosure Act

| | |
|---|---|
| Draft Number: | PCS 1805 |
| Sequential Referral: | none |
| Recommended Referral: | None |
| Long Title Amended: | No |

S.B. **997** Ignore Emergency Warning

| | |
|---|---|
| Draft Number: | PCS 8697 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **409** Airport Law Enforcement
Sequential Referral: None
Recommended Referral: None

S.B. **554** Paternity/Parental Support
Sequential Referral: None
Recommended Referral: None

S.B. **744** Grandparents' Child Support
Sequential Referral: None
Recommended Referral: None

S.B. **998** Fraud/"Pretend" Crime Victim
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, April 30, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **263** Workers' Comp./Nonresident Aliens
Draft Number: PCS 2779
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **324** Concealed Handguns/Liability
Draft Number: PCS 7780
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **430** Industrial Hygienists
Draft Number: PCS 6665
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **844** Strengthen Open Government
Draft Number: PCS 7778
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **862** UNC Contract Negotiations
Draft Number: PCS 2735
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Senate Judiciary 4-30-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Barbara Elliot | Good Neighbor |
| Hal Stern | ECMB |
| Jane Winn | NCBA |
| Bill Scogin | NCBA |
| John B. McMillan | Manning Fulton & Skinner PA |
| Cam Cover | BPMHL |
| Wendy Mills | SEANC |
| Terri Saylor | NC Press Association |
| Bonnie Allen | Secy. of State |
| F. Paul Valone | GRASS ROOTS NORTH CAROLINA |
| W.F. Daniel Jr | GRNC V.P. |
| John B. Posthill | GRASS ROOTS NORTH CAROLINA |
| Rhonda Little | DHR-CSE |
| Elvis Presley | Memphis, Tenn |
| Susan Valone | NWI |
| David Edwards | UNC General Counsel |
| Brenda Dougherty | Sprint |
| Doris Fraser | NC CWA Political Council |
| Walker Weaver | CWA |
| K.R. Humphrey | VAEYCO |
| PERRI MORGAN | NFIB |

Paul L. Blanchard, MD  Charlotte, NC
Healthways Family Medical Center
1701 Abbey Place

| | |
|---|---|
| Jane S Gray | DOJ |
| Jay | NCATTC |
| [illegible] | DOL |
| [illegible] | NCATTL |
| Mary Ann Gally | Atty |
| [illegible] | NCATL |
| [illegible] | NCMS |
| D.G MARTIN | UNC |
| LT DIAL | NC-AOC |
| Jane Grant | Court of Appeals |
| Robt PASCHAL | Young, Moore & Henderson |
| Julian Philpott | NCFB |
| MARSHA DAVIS JONES | NCRC |
| Gerald Arnold | COA |
| John Connell | COA |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# MAY 6, 1997

The Senate Judiciary Committee met on Tuesday, May 6, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Baddour to explain **House Bill 374** - 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.

Gary Eichelberger, with the Division of Victims Services, was recognized to speak on the bill.

Senator Odom moved to give the bill a favorable report and to re-refer it to the Appropriations Committee. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 203** - AN ACT TO SUPPLEMENT CLARK'S CALENDAR, WHICH MAY BE INTRODUCED IN EVIDENCE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Horton moved to give the bill a favorable report. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 954** - AN ACT TO AMEND EXISTING LAW PERTAINING TO SESSIONS OF THE SUPREME COURT.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 197** - AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Ralph Knott, with the Association of Clerks of Court, was recognized to speak on the bill.

Senator Odom moved to amend the bill on Page 3, Line 21. (See attached copy of the amendment.) The motion carried by voice vote.

Senator Kerr moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Representative Eddins was recognized to explain **House Bill 336** - AN ACT TO ALLOW TWO MEMBERS OF THE VICTIM'S FAMILY TO BE PRESENT AT AN EXECUTION.

Gregg Stahl, with the Department of Corrections, was recognized to speak on the bill.

Senator Kerr moved to amend the bill on Page 1, Lines 21 and 22. (See attached copy of the amendment.) The motion carried by voice vote.

Senator Winner moved to amend the bill on Page 1, Line 20. (See attached copy of the amendment.) The motion carried by a show-of-hands vote of 13-7.

Senator Rucho moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Representative Weatherly was recognized to explain **House Bill 147** - AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

Senator Kincaid moved to give the bill a favorable report and to re-refer it to the Appropriations Committee. The motion carried by voice vote.

There being no further business, the meeting adjourned at 10:55 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 6, 1997

| | | |
|---|---|---|
| HB 61 | GS 106 Obsolete Laws | Brown |
| HB 147 | Outlaw Dog Fights | Weatherly |
| HB 197 | Judicial Timber Sale/Sealed Bid | Culpepper |
| HB 203 | Courts Supplement Clark's Calendar | Culpepper |
| HB 336 | Victim's Family Witness Execution | Eddins |
| HB 374 | Modify Victims Compensation Act | Baddour |
| HB 954 | Supreme Court Sessions | Culpepper |

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May 6, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **MODIFY VICTIMS COMPENSATION ACT**
**House Bill 374** - Representative Baddour

House Bill 374 amends the Crime Victims Compensation Act. The Act compensates victims of "criminally injurious conduct" for economic loss, including lost wages, medical care, rehabilitation, funeral and burial expenses.

**Section 1** of the bill would increase the maximum compensation for funeral and burial expenses from $2,000 to $3,500.

**Section 2** of the bill amends the definition of "criminally injurious conduct" that determines whether an injury qualifies a victim for compensation. The current definition specifies that motor vehicle related incidents other than those involving driving while impaired are not covered. The bill expands the definition to include hit and run accidents, where the victim is a pedestrian or is in a wheelchair or similar device.

The bill would also expand the definition to include acts of terrorism committed outside of the U.S. against a N.C. citizen. An act of terrorism is defined in 18 USC 2331 as violent acts or acts dangerous to human life that would be a criminal violation if committed within the jurisdiction of the U.S. or of any State, and which appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by assassination or kidnapping. 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 bill. G.S. 15B-22 currently provides that if any compensation awarded cannot be paid due to insufficient funds in the Crime Victims Compensation Fund, payment is delayed until sufficient funds are available; no further awards of compensation may be made until sufficient funds are available. The fiscal note for House Bill 374 shows no fiscal impact. The fiscal note determines that it is unlikely the bill will increase claims beyond the current level of funding. The fiscal note shows that 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. ( A copy of the fiscal note is attached)

The bill would be effective when it becomes law. House Bill 374 would apply to claims arising from criminally injurious conduct that occurs on or after April 1, 1997. **Senate Bill 394,** introduced by Senator Rand, is identical in substance, but would make the changes apply to claims arising from criminally injurious conduct that occurs on or after September 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# 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.

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(919) 733-2578

May 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 203 - COURTS SUPPLEMENT CLARK'S CALENDAR -** Representative Culpepper

House Bill 203 would provide a method for supplementing Clark's Calendar which is recognized in statute as the official calendar used to establish which day of the week a particular date fell on. This bill is a recommendation of the General Statutes Commission.

G.S. 8-48 recognizes Clark's Calendar as defined therein as prima facie evidence of the information contained in the calendar for the periods between 1753 and 2002. This bill provides that beginning for the year 2003, the Secretary of State will prepare and publish a similar perpetual calendar that will be admissible into evidence as Clark's Calendar is currently used.

The bill becomes effective when it becomes law.

H203-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

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

**MEMORANDUM**

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: May 5, 1997

RE: House Bill 203 (Courts Supplement Clark's Calendar)

From time to time in litigation, it becomes necessary to prove by reference to a calendar on what day of the week a particular date fell. G.S. 8-48, enacted in 1941, officially recognizes a perpetual calendar prepared and published in 1940 by E. B. Clark of Weldon, North Carolina. Clark's Calendar, by statute, can be admitted into evidence without the need for the litigants to otherwise establish its admissibility. Clark's Calendar, however, only covers years from 1753 through 2002. It is still needed and will still be valuable for proving dates during that time period, but it needs to be supplemented for years beginning 2003. This bill amends G.S. 8-48 to require the Secretary of State to prepare a similar calendar for years beginning 2003 and to permit this calendar to be introduced in evidence to the same extent Clark's Calendar may be introduced. The bill also modernizes the drafting of the existing language in the statute.

# *Which Day of the Week was Your Birth Day?*

* * * *

Sunday, Monday, Tuesday, Wednesday, Thursday, Friday or Saturday?

* * * *

This 250 year calendar will tell you.

* * * *

A handy reference for everyone, regardless of age or business.

* * * *

Doctors, Lawyers, Farmers, Merchants, Offices, Stores, Postoffices, County Officials, Court Houses will find it handy, convenient, and correct.

* * * *

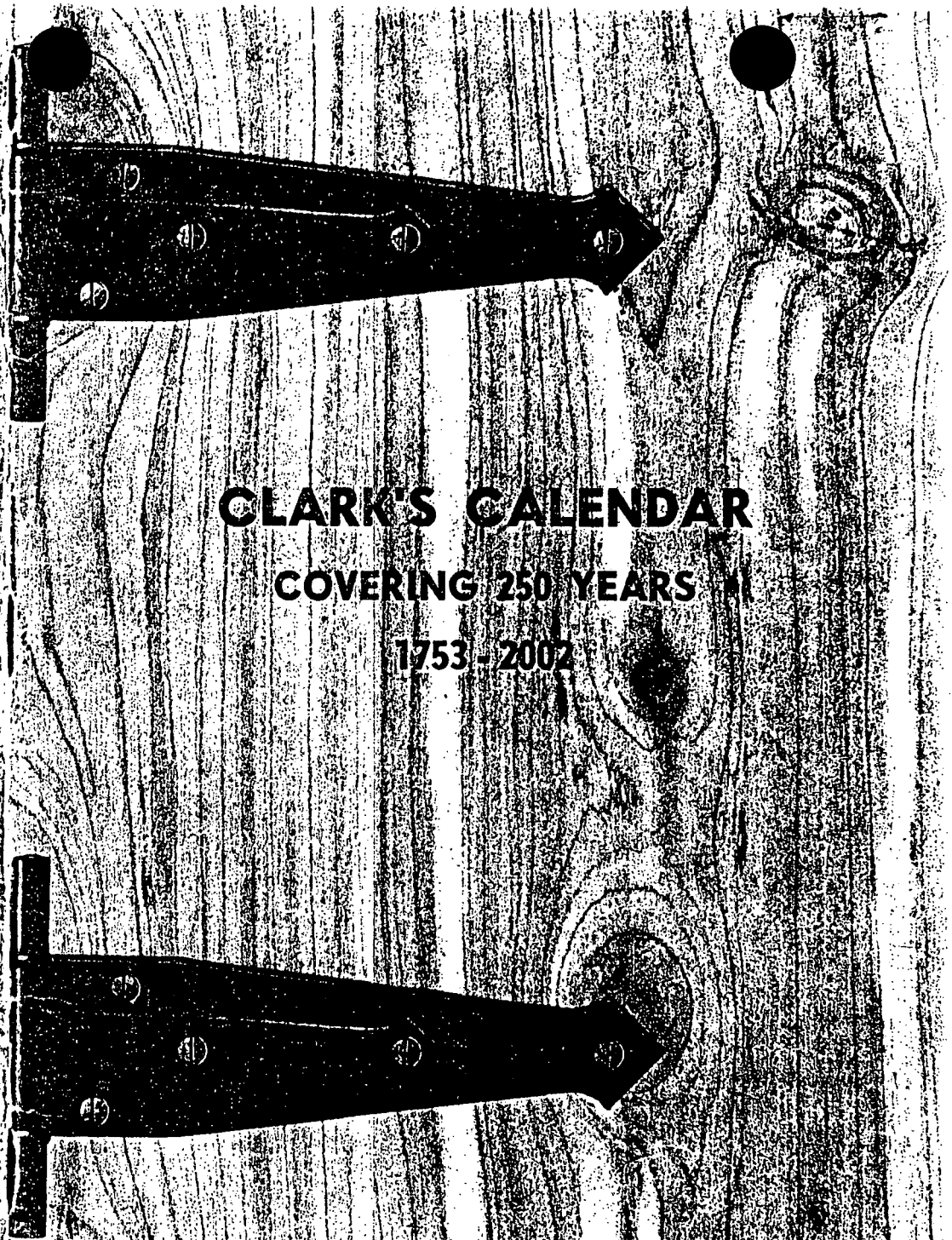
Whenever any calendar past, present or future, is needed this publication will serve.

* * * *

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 | Year | Page |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1753 | 2 | 1784 | 12 | 1815 | 1 | 1846 | 5 | 1877 | 2 | 1908 | 11 | 1939 | 1 | 1970 | 5 |
| 1754 | 3 | 1785 | 7 | 1816 | 9 | 1847 | 6 | 1878 | 3 | 1909 | 6 | 1940 | 9 | 1971 | 6 |
| 1755 | 4 | 1786 | 1 | 1817 | 4 | 1818 | 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 | 1859 | 3 | 1881 | 7 | 1912 | 9 | 1943 | 6 | 1974 | 3 |
| 1758 | 1 | 1789 | 5 | 1820 | 14 | 1851 | 4 | 1882 | 1 | 1913 | 4 | 1944 | 14 | 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 |
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| 1772 | 11 | 1803 | 7 | 1834 | 4 | 1865 | 1 | 1896 | 11 | 1927 | 7 | 1958 | 4 | 1989 | 1 |
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| 1774 | 7 | 1805 | 3 | 1836 | 13 | 1867 | 3 | 1898 | 7 | 1929 | 3 | 1960 | 13 | 1991 | 3 |
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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 |
| 1781 | 2 | 1812 | 11 | 1843 | 1 | 1874 | 5 | 1905 | 1 | 1936 | 11 | 1967 | 1 | 1998 | 5 |
| 1782 | 3 | 1813 | 6 | 1844 | 9 | 1875 | 6 | 1906 | 2 | 1937 | 6 | 1968 | 9 | 1999 | 6 |
| 1783 | 4 | 1814 | 7 | 1845 | 4 | 1876 | 11 | 1907 | 3 | 1938 | 7 | 1969 | 4 | 2000 | 14 |
| | | | | | | | | | | | | | | 2001 | 2 |
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**1753 first complete year under our present calendar. Eleven days were omitted in 1752.**

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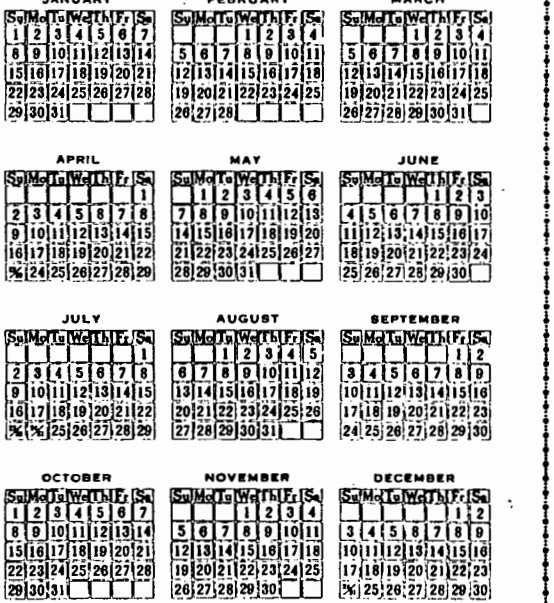




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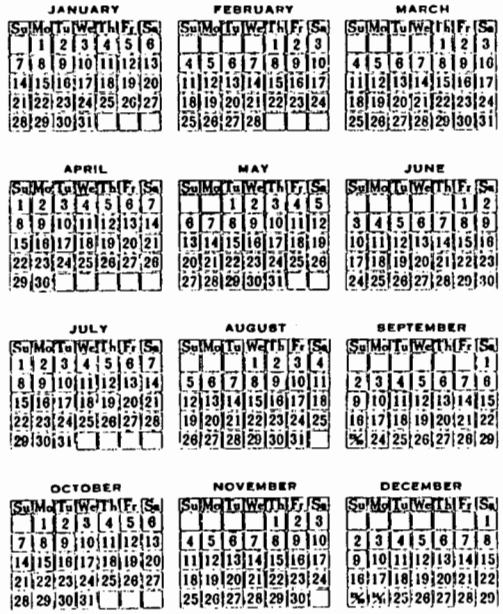




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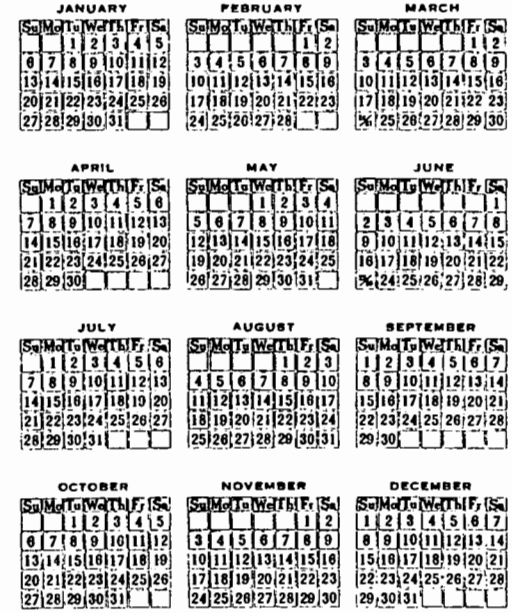




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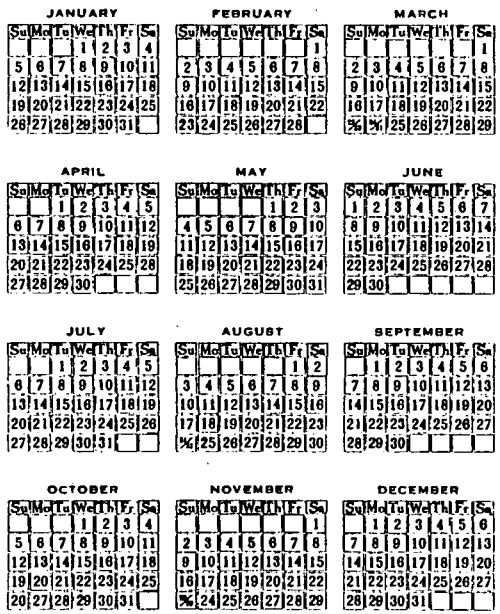




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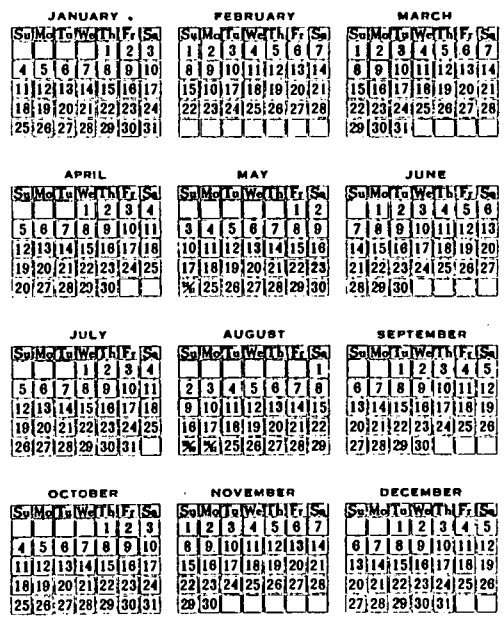




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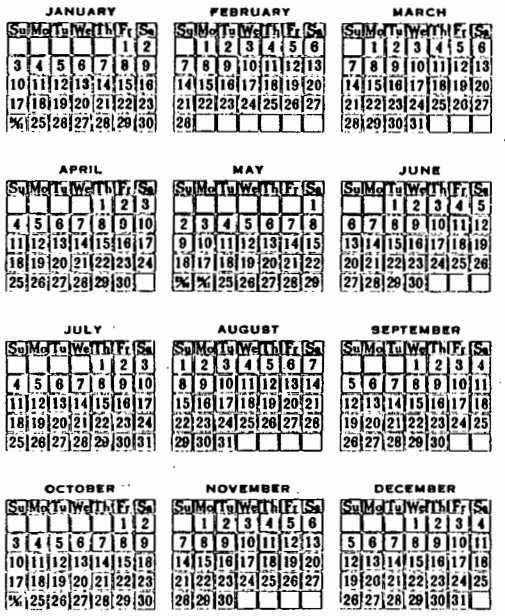




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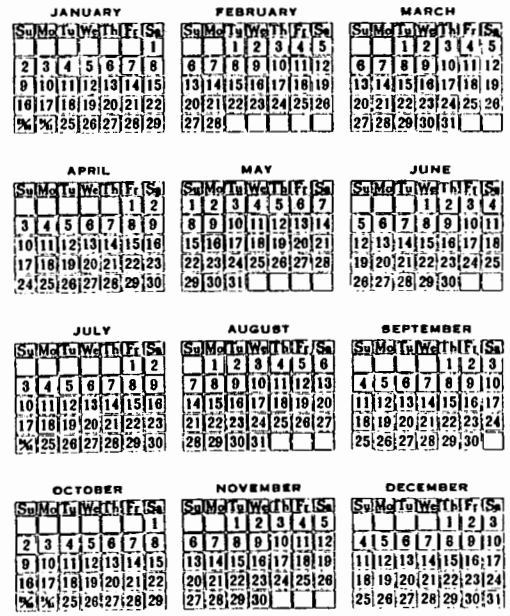




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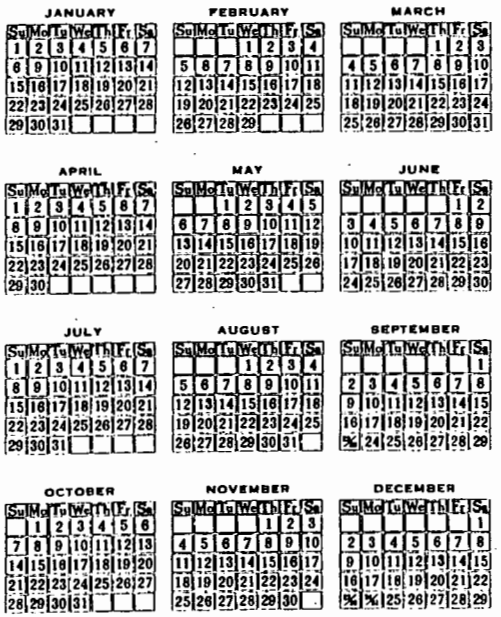




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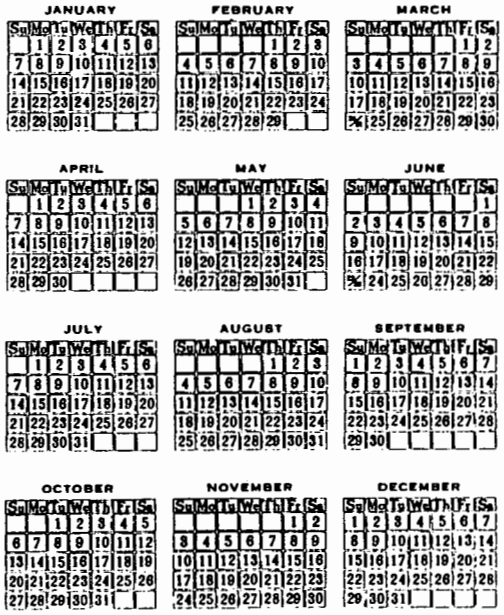




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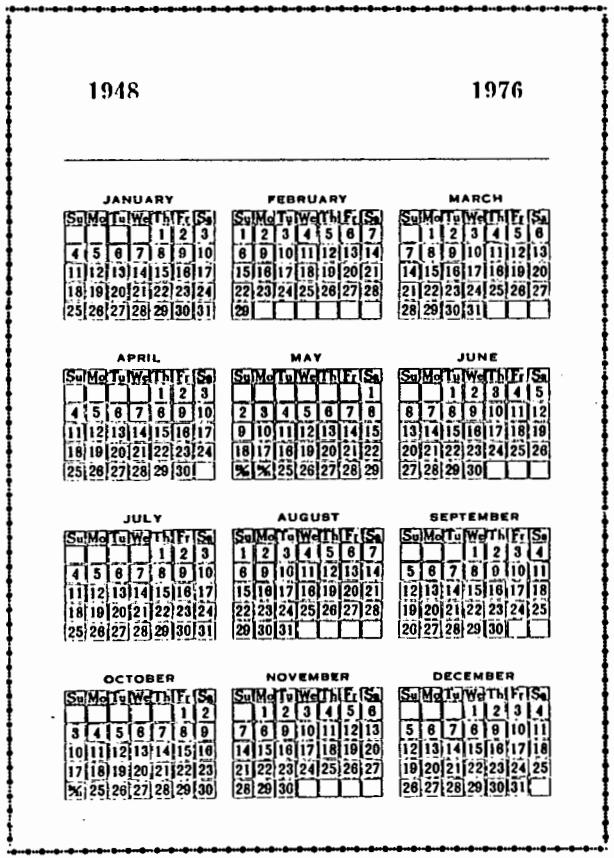




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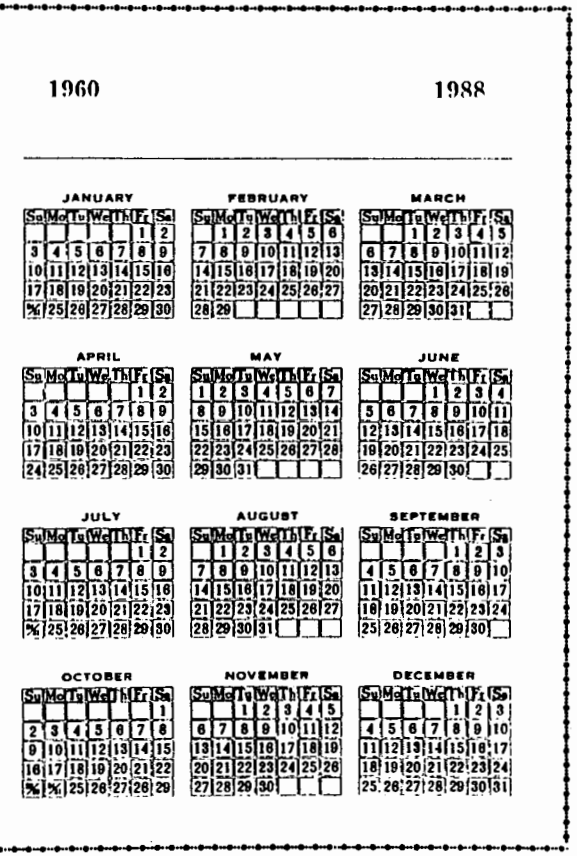




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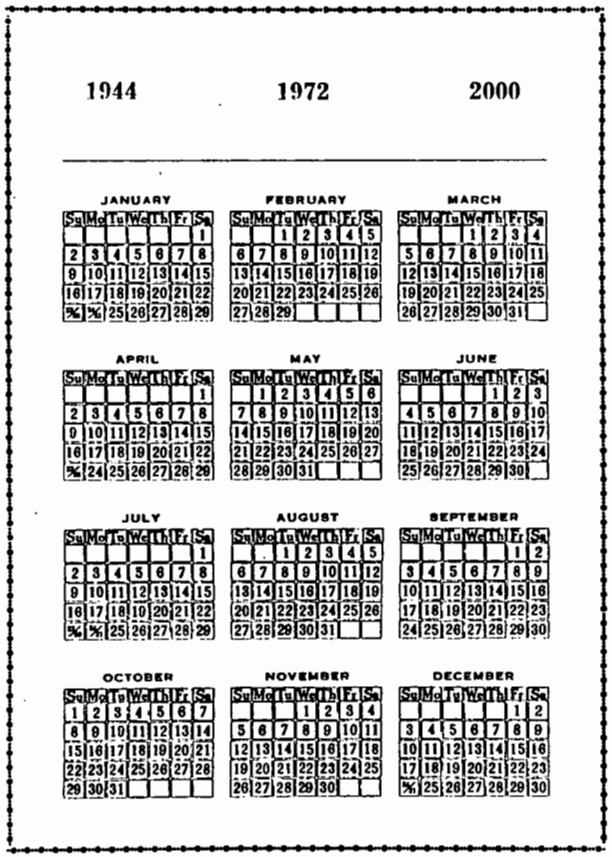




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May 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, House Judiciary II Co-Counsel

**RE:** **HOUSE BILL 954 - Supreme Court Sessions** - Representative 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.

H954-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

**North Carolina General Assembly**
**Legislative Services Office**

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May 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 197 - JUDICIAL TIMBER SALE BY SEALED BID -** Representative Culpepper.

House Bill 197 establishes a procedure for judicial sales (court ordered sales) of timber to be conducted by sealed bid. This option would be in addition to the other current options of public or private sales. This bill is a recommendation of the General Statutes Commission.

Section 1 of the bill authorizes the court to determine with a judicial sale should be a private sale or public sale. If the sale is to be public, for the sale of timber only, the court can decide whether the sale is to be by auction or sealed bid.

Section 6 sets out the procedures to be followed when the court orders the judicial sale of timber by sealed bid. Under this section, the person holding the sale is to obtain one or more appraisals of the timber. The person then determines how bids should be submitted including the opening and closing dates for accepting bids. This section specifies the necessary qualifications for appraisers, prohibits the appraiser or business associate of the appraiser from submitting a bid, requires the appraisal to be kept confidential, and prohibits the appraiser from appraising the timber for anyone else until the sale is final. A minimum of three bids must be received. All bids must be opened in public and the highest bidder announced.

Section 7 sets out the time for a deposit to be made by the highest bidder in a sale by sealed bid.

Section 8 provides that in addition to the standard notices for sales, in the sale of timber by sealed bid, notice must be sent at least 21 days prior to the date the bids are opened to a reasonable number prospective timber buyers including timber buyers listed with the local office of the Division of Forest Resources.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 28 requires that before confirming a sale by sealed bid, the court must determine that the highest bid is adequate for the timber sold and that the sale is in the best interest of the person or estate for whom the timber is being sold. This section lists the factors the court may consider, including the appraisals obtained by the person conducting the sale.

The remaining sections of the bill make conforming and clarifying changes, primarily to distinguish public sales of timber by auction from public sales by sealed bid.

Although Section 6 provides that the appraisal is confidential and may not be divulged to anyone other than the person conducting the sale, this section also requires that the appraisal be included in the report of sale. Section 28 also authorizes the court to consider the appraisals before confirming the sale. These section appear to leave some confusion as to whether the appraisal becomes public record at some point in the process, or is segregated and remains confidential (and presumably not public record) forever.

The bill becomes effective December 1, 1997 and applies to judicial sales ordered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 197
Committee Substitute Favorable 3/10/97

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;

(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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 197 DATE _____

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

Rep. )
) _____
Sen. )

moves to amend the bill on page 3, line 21

by DELETING THE WORD "CONFIDENTIAL." AND SUBSTITUTING THE WORDS "CONFIDENTIAL UNTIL THE APPRAISAL IS FILED WITH THE REPORT OF SALE PURSUANT TO G.S. 1-339.24."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

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

**MEMORANDUM**

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: May 5, 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. As originally introduced, the procedure in the bill was limited to sales of timber, or timber and the land on which it stood, because the problem described to the General Statutes Commission was only reported in connection with timber sales. The House further restricted the procedure to sales of timber only. Please note that 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 amend 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. The House expanded the provisions relating to appraisers to prohibit a person who makes the appraisal from also bidding on the timber and to impose a confidentiality requirement.

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 amend 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 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.

Section 25 amends G.S. 1-339.27 to specify that this section does not apply to public sales by sealed bid.

Sections 26 through 28 amend G.S. 1-339.28, which requires judicial confirmation of a public sale. Section 26 makes a technical amendment updating the description of the judge who must confirm the sale. Section 27 clarifies that subsection (c) does not apply to public sales by sealed bid. Section 28 adds a new subsection (e) setting out separate requirements for confirmation of sales by sealed bid.

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, and applicable to judicial sales ordered on or after that date.

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May 6, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 336 - VICTIM'S FAMILY WITNESS EXECUTION**
Representative Eddins

House Bill 336 amends G.S. 15-190. This statute deals with the carrying out of executions when there has been a sentence of death. Under current law, the following persons are permitted to witness the execution of an inmate:

-the warden or his designee
-the penitentiary's physician
-the inmate's lawyer
-any relatives of the inmate
-a minister
-six "respectable citizens"

House Bill 336 reduces the number of citizen witnesses from six to four and adds two members of the victim's family to those who may witness the execution if they so desire. It also changes the penitentiary physician from one who may attend the execution to one who is required to attend. As a practical matter, a physician would always be present at an execution.

The existing statute provides that executions are under the general supervision and control of the warden of the penitentiary.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 336

Short Title: Victim's Family Witness Execution. (Public)

Sponsors: Representatives Eddins; Culp, Dedmon, R. Hunter, Sexton, and Starnes.

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW TWO MEMBERS OF THE VICTIM'S FAMILY TO BE PRESENT AT AN EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-190 reads as rewritten:

"**§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.**

Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in ~~his stead;~~ the warden's place, and the surgeon or physician of the ~~penitentiary~~ penitentiary, ~~and six~~ Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or ministers of the gospel may be present if they so ~~desire,~~ desire. ~~and the~~ The board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty-five dollars ($35.00)."

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

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 336 DATE 5-6-97

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. ) KERR
)
Sen. )

moves to amend the bill on page 1, line 21-22

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

" they so ~~desire~~, desire. ~~and the board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty-five dollars ($35.00).~~ "

SIGNED _____

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. 336 DATE 5-6-97

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

Rep. ) Winner
)
Sen. )

moves to amend the bill on page 1, line 20

by 1st

deleting ~~[illegible]~~ minister of the gospel

+ Substituting

member of the clergy
~~a religious person~~ or religious leader of the ~~victim's~~ person's choosing

SIGNED Leslie Winner

ADOPTED _____ FAILED _____ TABLED _____

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

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May 6, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 147 - OUTLAW DOG FIGHTS**
Representative Weatherly

House Bill 147 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. Under current law, G.S. 14-362.1 offenses involving animal fights other than cockfights are Class 2 misdemeanors; a second or subsequent offense within 3 years is a Class I felony. Cockfighting is a Class 2 misdemeanor in all instances. House Bill 147 makes a dogfighting offense a Class H felony. The minimum presumptive sentence for a Class H felony, assuming no prior offenses, is 5-6 months community, intermediate, or active punishment.

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 also guilty of a Class H felony.

As with other animal fights in 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 applicable to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 147
Committee Substitute Favorable 4/14/97
Third Edition Engrossed 4/15/97

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 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**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

**REVISED REPORT**

Tuesday, May 06, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS) **147** Outlaw Dog Fights
Sequential Referral: None
Recommended Referral: Appropriations

H.B. **203** Courts Supplement Clark's Calendar
Sequential Referral: None
Recommended Referral: None

H.B. **374** Modify Victims Compensation Act/AB
Sequential Referral: None
Recommended Referral: Appropriations

H.B. **954** Supreme Court Sessions
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper Sign

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, May 07, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **336** Victim's Family Witness Execution

| | |
|---|---|
| Draft Number: | PCS 8219 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **197** Judicial Timber Sale/Sealed Bid

| | |
|---|---|
| Draft Number: | PCS 4114 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

# VISITOR REGISTRATION SHEET

**SENATE COMMITTEE ON EDUCATION/HIGHER EDUCATION**
**April 30, 1997**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Eichelberger | Corps |
| [illegible] | NCHA |
| Eddie Caldwell | NC Sheriffs Assn / NC Law Enf. Off. Assn. |
| David Ferrell | Hoffa, McNamara, Caldwell, McElroy & Cutler |
| David McLeod | NCDA |
| Bob Slocum | NC Forestry Association |
| Jess Templeton | Self |
| Joe Donovan | Self |
| Doris Weaver | NC CWA Political Council |
| Jane P. Gray | DOJ |
| Rob Schofield | NCJCDC |
| Peg Dorer | NCCDA |

# VISITOR REGISTRATION SHEET

**SENATE COMMITTEE ON EDUCATION/HIGHER EDUCATION**
**April 30, 1997**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Patricia Rawlins | NCAE |
| Andy Ellen | NC Farm Bureau |
| Dick Jagla | NCAE |
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**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**MAY 8, 1997**

The Senate Judiciary Committee met on Thursday, May 8, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Forrester to explain **House Bill 61** - AN ACT TO REPEAL OBSOLETE SECTIONS OF CHAPTER 106 OF THE NORTH CAROLINA GENERAL STATUTES for Representative Brown, the bill sponsor.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 676** - AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 676 for discussion. The motion carried by voice vote.

John Aldridge, with the Attorney General's office, was recognized to speak on the Proposed Committee Substitute.

After discussion by the Committee, Senator Cooper asked that the bill be held and taken up at a future meeting.

Senator Weinstein was recognized to explain **Senate Bill 893** - AN ACT TO REGULATE CHARITABLE BINGO.

The following people were recognized to speak on the bill:

Brenda Brewer - N. C. Charitable Bingo Association
Woody Webb - representing Charitable Bingo Operators
Ed Lawson - Veterans of Foreign Wars Association

Further discussion of this bill will be heard at a future meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 8, 1997

| | | |
|---|---|---|
| HB 61 | GS 106 Obsolete Laws | Brown |
| SB 676 | Sex Offender Laws/Fed. Compliance | Odom |
| SB 893 | Regulating Charitable Bingo | Weinstein |

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May 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 61 - REPEAL OBSOLETE AGRICULTURE STATUTES** - Representative Brown.

House Bill 61 repeals obsolete provisions of Chapter 106 - Agriculture. This bill was recommended by the Agriculture and Forestry Awareness Study Commission. A list of the statutes affected by the bill is attached to this summary for reference.

This bill becomes effective when it becomes law.

H61-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

# PROPOSED CHANGES TO CHAPTER 106 OF THE GENERAL STATUTES

| G.S. | Subject Matter | Proposed Action | Remarks |
|---|---|---|---|
| 106-5 | Provides for committees of the Board of Agriculture | Repeal | Obsolete & unnecessary |
| 106-9 | Requires annual report from Board of Agriculture | Repeal | Obsolete-superseded by Executive Budget Act |
| 106-12 | Provides for appointment of employees by Commissioner of Agriculture | Repeal | Obsolete |
| 106-13 | Commissioner of Agriculture to investigate sources of fertilizer | Repeal | Obsolete-superseded by Fertilizer Law |
| 106-15 thru 106-18 | Provides for purchase and sale of research farms | Repeal | Obsolete |
| 106-19 | Provides for State Chemist | Repeal | Obsolete |
| 106-169 thru 106-173 | Provides for local meat inspection | Repeal | Obsolete-superseded by other laws |
| 106-197 | Requires grower's or shipper's name on produce | Repeal | Obsolete-superseded by G.S. 81A-27 & Federal Fair Packaging & Labeling Act |
| 106-429.1 thru 106-434, thru 106-451.1 | Cotton warehouse law enacted in 1919 | Repeal | Obsolete-superseded by 1987 Cotton Warehouse Act, Art. 38A |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 61*
Second Edition Engrossed 3/4/97

Short Title: Proposed Changes/Chapter 106. (Public)

Sponsors: Representatives Brown; Culp and Hill.

Referred to: Agriculture.

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE SECTIONS OF CHAPTER 106 OF THE NORTH CAROLINA GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-5 is repealed.

Section 2. G.S. 106-9 is repealed.

Section 3. G.S. 106-12 is repealed.

Section 4. G.S. 106-13 is repealed.

Section 5. G.S. 106-15, 106-16, 106-17, and 106-18 are repealed.

Section 6. G.S. 106-19 is repealed.

Section 7. G.S. 106-21 is repealed.

Section 8. Article 15 of Chapter 106 of the General Statutes is repealed.

Section 9. G.S. 106-197 is repealed.

Section 10. G.S. 106-429.1 through G.S. 106-434 are repealed.

Section 11. G.S. 106-436 through G.S. 106-451.1 are repealed.

Section 12. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, May 08, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **61** Proposed Changes/Chapter 106
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 676*

Short Title: Sex Offender Laws/Fed. Compliance. (Public)

Sponsors: Senators Odom; Albertson, Allran, Carpenter, Carrington, Cochrane, Cooper, East, Forrester, Foxx, Garwood, Gulley, Hoyle, Jordan, Kincaid, Martin of Guilford, McDaniel, Page, Perdue, Phillips, Plyler, Rand, Reeves, Rucho, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

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.~~

"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.

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May 8, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 676 - SEX OFFENDER LAWS / FEDERAL COMPLIANCE**
**Proposed Committee Substitute**
Senator Odom

Senate Bill 676 rewrites Article 27A of Chapter 14 of the General Statutes, regarding the registration of persons convicted of sex offenses.

**Background:** The Jacob Wetterling Act, as amended by Megan's Law, requires states to adopt sex offender registration and notification systems that meet specified minimum standards. States that fail to implement a program consistent with the federal Act by September 13, 1997 (three years from the enactment date of the Jacob Wetterling Act) will lose 10% of their Byrne formula grant funds. A state making a good faith effort to come into compliance may be granted up to a two-year extension. According to the Governor's Crime Commission, this State currently receives about $12.8 million in Byrne Grant funds; 10% of that amount would be about $1.28 million, and is the amount that would be lost if the State does not comply with the federal requirements. The State is to submit its program to the U. S. Department of Justice for review for compliance by July 13, 1997.

North Carolina's current sex offender registration law requires a person with a "reportable conviction" as defined in the statute to maintain registration with the sheriff of the county in which the person resides. A person must register within 10 days of release from a penal institution or immediately upon conviction where an active term of imprisonment was not imposed. Registration is maintained for a period of 10 years. In order to comply with federal requirements, **Senate Bill 676** makes the following changes with regard to sex offender registration:

**--Establishes two registration programs: The Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program.** The current registration program is amended by creating a class of "sexually violent predator" which must register under a different set of requirements. Persons who are not classified as a "sexually violent predator" will continue to register under the existing program (renamed the The Sex Offender and Public Protection Registration Program).

**--The Sex Offender and Public Protection Registration Program establishes a 10 year registration requirement for persons convicted of sexually violent offenses and certain offenses against minors.** The offenses that are currently enumerated as "reportable convictions" for which a person must register are categorized as "sexually violent offenses" in the bill (Page 4, lines 11-31); in effect, this is not a change from current law - these people are already required to register for a 10-year period. To comply with federal law, the bill requires that persons who are convicted of kidnapping, abduction of children, or felonious restraint will be required to register when the offense was committed against a minor and when the offender is not the parent or legal guardian of the minor.

**--The Sexually Violent Predator Registration Program establishes a more stringent set of requirements for a sub-class of highly dangerous sex offenders, characterized as sexually violent predators. A person classified as a sexual predator must maintain registration for at least 10 years, and continue to maintain registration indefinitely until a court determines that the person's classification should be terminated.** Senate Bill 676 defines a "sexually violent predator" as 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. The terms are defined in the bill on pages 2-4.

- **Sets out procedure for classifying defendant as sexually violent predator.** (Page 11, line 24 through Page 12, line 7)
  - ◊ *The district attorney files pretrial notice of intent to seek classification of the offender as a sexually violent predator.*
  - ◊ *The court will order a pre-sentence investigation conducted by a board selected by the Department of Correction and composed of at least 2 people who are experts in the behavior and treatment of sexual offenders.*
  - ◊ *At sentencing, the court will consider the board's report and make written findings as to whether the defendant is classified as a sexually violent predator.*
  - ◊ *After 10 years, the person may petition the superior court to review the classification. The decision regarding whether to grant the review is in the discretion of the court.*

- **Requires additional registration information from persons classified as sexually violent predator.** In addition to information required of all registered sex offenders, information shall be obtained regarding the person's identifying factors, offense history, and documentation of treatment received.

**--Requires verification of registration information for all registrants at least annually; every 90 days for sexually violent predators.** Every year the Division of Criminal Statistics of the Department of Justice will mail a nonforwardable verification form to the last reported address of the offender; the person must then mail the form to the sheriff within 10 days. (Page 7, lines 10-31). The procedure is the same for sexually violent predators, except the verification must occur every 90 days. (Page 12, line 38-Page 13, line 2).

**--Changes criminal provisions regarding failure to register and maintain current registration.** Under current N.C. law, failure to register as required is a Class 3 misdemeanor for the first violation, and a Class I felony for a subsequent violation. Senate Bill 676 provides that it is a Class F felony to: fail to register, fail to notify the last registering sheriff of a change of address, fail to return a verification notice, forge or submit under false pretense the required information or verification notices. (Page 8, line 32 - Page 9, line 11)

**--Eliminates possibility of exemption from registration requirement.**
Under current N.C. law, a person may petition the superior court in the county where the person resides for an exemption from the registration requirement. If the person shows for good cause, by clear and convincing evidence, that registration will not serve any useful purpose, the court will grant the exemption. To comply with federal requirements, the exemption is being eliminated.

**--Designates a responsible state agency for receiving registration information from all other agencies and officers.** The bill provides that the Division of Criminal Statistics will compile and keep current a central statewide sex offender registry, and designates the Division as the custodian of the state wide registry. The Division will receive the registration and change of address information from the sheriffs, and will receive notice of any violations - including failure to register. The Division will coordinate efforts among law enforcement agencies and penal institutions to ensure that information is conveyed in a timely manner. (Page 10, line 10 - Page 11, line 5).

**--Changes provisions for release of registration information** (Page 7, line 32 - Page 8, line 31).
Under federal law, relevant information may be released that is necessary to protect the public concerning a person required to register as a sex offender. Federal law allows the states to determine what information is relevant and necessary to protect the public, but prohibits the release of the victim's identity. Under current N.C. law, any person may obtain information concerning a specific individual's registration status by submitting to the sheriff the individual's name & sex, physical description, and other known information. The sheriff will then verify whether the individual has registered as a sex offender, the date of conviction, and the offenses for which registration was required. The sheriff may display, but not provide a copy of, a photograph that is part of the registration. Certain groups that use volunteers or employees in working with children, disabled, or elderly persons are authorized to get a copy of a county's entire registry.

- **Provides that registration information is a public record, and provides that any person may obtain a copy of a person's registration or any or all of the county registry by making a written request to the sheriff.** The sheriff may charge a reasonable fee for duplicating or mailing costs. It allows the sheriff to release additional relevant information that is necessary to protect the public concerning a specific person, but prohibits release of the victim's identity.
- **Makes statewide registry public record (except photographs which may be obtained at the local level), available for public inspection.** A person may obtain a copy of an individual's electronic registration record, or any or all of the statewide registry by making a written request to the Division. The Division is authorized to charge a reasonable fee for duplicating and mailing costs.

**The bill would become effective April 1, 1998.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 676*
Proposed Committee Substitute S676-CSRV-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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), 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.

(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 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 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, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 893

Short Title: Regulating Charitable Bingo. (Public)

Sponsors: Senators Weinstein; Ballance, Carpenter, Cochrane, Conder, Cooper, Dalton, Kincaid, Ledbetter, Odom, Soles, and Warren.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHARITABLE BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

"**§ 14-309.5. Bingo.**

(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified ~~herein;~~ in this Part; that the only justification for this Part is to support ~~such~~ these charitable, nonprofit causes; and ~~such~~ this purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.

(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction ~~such~~ the licensed exempt organization and any person affiliated, in any way, with the licensed exempt organization shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting

services to any licensee. If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspensi or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.

(c) It is lawful for an exempt organization to conduct charity game ticket games in accordance with the provisions of this Part. Any licensed exempt organization that conducts a charity game ticket game in violation of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction, that exempt organization shall not conduct a bingo game or charity game ticket game for a period of one year. It is lawful to participate in a charity game ticket game conducted pursuant to this Part. It shall be a Class I felony for any person:

(1) To sell or otherwise furnish charity game tickets other than in a charity game ticket game conducted by a licensed exempt organization in accordance with the provisions of this Part;

(2) To operate a charity game ticket game without a license;

(3) To operate a charity game ticket game while a license is revoked or suspended;

(4) To willfully misuse or misapply any moneys received in connection with any charity game ticket game;

(5) To contract with or provide consulting services to any licensee.

If the Department of Human Resources finds that any licensed exempt organization that conducts a charity game ticket game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a charity game ticket game conducted in accordance with this Part."

Section 2. G.S. 14-309.6 reads as rewritten:

"**§ 14-309.6. Definitions.**

For purposes of this Part, the term:

(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on ~~such~~ the cards conforming to a predetermined pattern of ~~numbers (but shall not include "instant bingo" which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~ numbers;

(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.

(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:

a. The county police force; or

b. The county sheriff's office in a county with no county police force;

(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force;

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid ~~license.~~ license;

(8) 'Charity game ticket' means a folded or banded ticket or card with perforated break-open tabs, made completely of paper or paper products, the face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prizewinners with the maximum amount which can be charged for each card being fifty cents (50¢);

(9) 'Charity game ticket game' means the sale of a separate package or series of packages consisting of one complete set of charity game tickets in which all tickets in the set bear the same serial number; and

(10) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo in which a player must cover a specified number of spaces to win."

Section 3. G.S. 14-309.7 reads as rewritten:

"**§ 14-309.7. Licensing procedure.**

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) for a Class A bingo license and three hundred dollars ($300.00) for a Class B bingo license to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. ~~This~~ Each class of bingo license shall expire one year after the granting of the license. ~~This~~ Each class of bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(a1) An exempt organization may not operate a charity game ticket game at a location without a license. Application for a charity game ticket game license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of two hundred dollars ($200.00) for a Class A charity game ticket game license and three hundred dollars ($300.00) for a Class B charity game ticket game license to defray the cost of issuing charity game ticket game licenses, handling charity game ticket game audit reports, and regulating the operation of charity game ticket games. An exempt organization shall hold a Class A or Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class A charity game ticket game license. An exempt organization shall hold a Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class B charity game ticket game license. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. Each class of charity game ticket game license shall expire one year after the granting of the license. Each class of charity game ticket game license may be renewed yearly, if the applicant pays the application fee and files an audit

with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law enforcement agency in the county or municipality in which the licensee intends to operate before charity game ticket games are conducted in conjunction with a bingo game conducted by the licensee. The day or days of the week and the time of day charity game ticket games are conducted by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played or charity game ticket games are conducted.

(b) Each application and renewal application for a Class A or Class B bingo license and a Class A or Class B charity game ticket game license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games and charity game ticket games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. ~~Such~~ The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the

purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of an exempt organization. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings ~~must~~ shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and ~~one-quarter percent (1 1/4%)~~ one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game ~~must~~ shall be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. ~~It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

(d) Conduct of a bingo game or raffle under this Part on ~~such~~ that property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.

(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require ~~such~~ any information ~~as~~ that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. ~~Such~~ The report may require ~~such~~ any information ~~as~~ that is

reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided ~~such~~ that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. An exempt organization conducting only an annual or semiannual bingo game under this subsection may not apply for a charity game ticket game license, conduct charity game ticket games, or sell or furnish charity game tickets in any manner at any time. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

(a) The number of sessions of bingo conducted ~~or sponsored~~ by an exempt organization shall be limited to one session per week for those exempt organizations operating with a Class A bingo license and two sessions per week for those exempt organizations operating with a Class B bingo license and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same exempt organization. An exempt organization operating with a Class A bingo license may conduct a bingo session only on the day of the week and at the time of day selected by that exempt organization in its application for a Class A bingo license and listed on the face of the Class A bingo license issued by the Department. An exempt organization operating with a Class B bingo license may conduct bingo sessions only on one or more of the two days and at the time of day selected by that exempt organization in its application for a Class B bingo license and listed on the face of the Class B bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt organization holding either class of bingo license may conduct a session of bingo on a day other than that which appears on the face of the bingo license, provided that the conduct of the bingo session would not cause that exempt organization to exceed the session limits during any one calendar week set forth in this section for the class of bingo license held by that exempt organization or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the bingo license. ~~This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(b) Charity game ticket games shall be conducted during and in conjunction with a session of bingo and may only be conducted by the same exempt organization conducting the session of bingo and at the same location where the bingo session is being conducted. The number of sessions of bingo conducted by an exempt

organization at which charity game ticket games may be conducted shall be limited to one session per week for those exempt organizations operating with a Class A charity game ticket game license and two sessions per week for those exempt organizations operating with a Class B charity game ticket game license.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§ 14-309.9. Bingo and charity game ticket game prizes.**

(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of ~~bingo~~ bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is ~~one thousand five hundred dollars ($1,500).~~ three thousand five hundred dollars ($3,500), excluding cash or merchandise that may be offered or paid for charity game tickets sold during the session in charity game ticket games. Prizes in cash or merchandise that may be offered or paid for a jackpot bingo game shall be excluded from this maximum aggregate amount. ~~Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.

(d) The maximum prize in cash or merchandise that may be offered or paid for any one charity game ticket is one hundred dollars ($100.00).

(e) The maximum prize in cash or merchandise that may be offered or paid for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§ 14-309.10. Operation of ~~bingo.~~ bingo and charity game ticket games.**

The operation of bingo games and the sale of charity game ticket games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the exempt organization in the manner provided by the rules of the exempt organization."

Section 7. G.S. 14-309.11 reads as rewritten:

"**§ 14-309.11. ~~Accounting~~ Accounting, enforcement, and use of proceeds.**

(a) All funds received in connection with a bingo game or charity game ticket game shall be placed in a separate bank account. No funds may be disbursed from this account except the exempt organization may expend proceeds for prizes,

advertising, utilities, and the purchase of supplies and equipment used in playing ~~bingo,~~ bingo and the sale of charity game ticket games, taxes and license fees related to bingo and the sale of charity game ticket games and the payment of compensation as authorized by G.S. 14-309.7(c) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law enforcement agency~~ at a time directed by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;
(2) The location and date at which each bingo game was conducted and the prize awarded;
(3) The gross receipts of each bingo game;
(4) The cost or amount of any prize given at each bingo game;
(5) The amount paid in prizes at each ~~session;~~ session of bingo;
(6) The net return to the exempt organization; and
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(b1) The audit shall also contain, on a separate form approved by the Department of Human Resources, the following information:

(1) The serial number of each charity game ticket game;
(2) The gross receipts of each charity game ticket game;
(3) The amount paid in prizes at each charity game ticket game; and
(4) The net return to the exempt organization from each charity game ticket game.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class 2 misdemeanor.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained

by an exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies or charity game tickets are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is gambling.**

A bingo game or charity game ticket game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game or charity game ticket game may be instituted as provided for in Chapter 19 of the General Statutes."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any exempt organization operating a bingo game or charity game ticket game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game or charity game ticket game open to the general public."

Section 10. G.S. 14-309.14 is repealed.

Section 11. To implement the transition in regulating charitable bingo from the prior law to the statutes made effective by this act, the Department of Human Resources shall issue transitional rules providing for the conversion of the licenses issued under the prior applicable laws and the new licenses required by this act. The rules shall provide, inter alia:

(1) That exempt organizations licensed on the effective date of this act may immediately apply for new licenses that shall expire when the licenses held on the effective date of this act would have expired;

(2) For the staggered expiration of licenses issued pursuant to this act; and

( ) For prorated payment of the new fees required by this act based on the expiration date of the license held on the effective date of this act.

The Department of Human Resources shall develop and issue the rules prior to October 1, 1997.

Section 12. Sections 11 and 12 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** Senate Bill 893

**SHORT TITLE:** Regulating Charitable Bingo

**SPONSOR(S):** Senator Weinstein

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **Human Resources** | | | | | |
| **Revenues** | $200,000 | $240,000 | $256,000 | $272,000 | $272,000 |
| **Expenditures[1]** | ($168,254) | ($236,597) | ($242,883) | ($249,383) | ($256,105) |
| **Revenues/Expenditures** | $31,746 | $3,403 | $13,117 | $22,617 | $15,895 |
| **Correction** | No Fiscal Impact | | | | |
| **Judicial** | No Fiscal Impact | | | | |
| **POSITIONS:** | 6 | 6 | 6 | 6 | 6 |

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**
Department of Human Resources
Division of Facility Services
Department. of Correction
Judicial Branch

**EFFECTIVE DATE:** Effective December 1, 1997.

[1] Includes Salaries, benefits and all related support costs.

**BILL SUMMARY:**

**REGULATING CHARITABLE BINGO.** *TO REGULATE CHARITABLE BINGO.* Provisions regarding bingo licensing, enforcement of bingo laws, maximum prizes in bingo games, and jackpot bingo are substantially identical to provisions of H 951, introduced 4/15/97. Adds provisions regarding "charity game ticket games" described below.

Amends GS 14-309.5 to allow exempt organization to conduct "charity game ticket games" (defined as sale of package or series of packages consisting of one complete set of charity game tickets in which all tickets bear same serial number). A "charity game ticket" is a paper ticket or card which may be designated in advance as prizewinner through partly hidden number or symbol. No more than 50 cents may be charged for each such ticket. Exempt organization may apply to DHR for charity game ticket game license lasting one year. Application fee is $200 for class A charity game ticket game license (allowing one game session per week) and $300 for class B license (allowing two sessions per week). Fees collected are deposited in bingo regulation enforcement fund to be used to enforce bingo laws. Exempt organization that conducts only an annual or semiannual bingo game may not apply for license for or conduct charity game ticket game. Amends GS 14-309.9 to limit value of prize for any one charity game ticket game to $100, and $3,500 for all games during one session. Makes it class 2 misdemeanor to conduct charity game ticket game in violation of bingo provisions of GS Ch. 14, Art. 37, Part 2. On conviction, exempt organization may not conduct bingo games for one year. Makes it a Class I felony to sell or furnish charity game tickets other than in game conducted by licensed organization, to operate charity game ticket game without valid license, to misuse moneys received in connection with such game, or to contract with or provide consulting services to any licensee. Authorizes DHR to suspend license for at least 30 days if it finds charity game ticket game in violation. Licensee may seek review by initiating contested case under GS Ch. 150B. Effective Dec. 1, 1997. DHR is authorized to issue rules to comply with act as soon as act becomes law. [2]

**ASSUMPTIONS AND METHODOLOGY:**

***Department of Human Resources***

**A. Background**

The Division of Facility Services is responsible for regulating charitable bingo. Under current law, the division has one person assigned to fulfill the regulatory requirements for charitable bingo. The proposed legislation significantly expands the regulatory responsibilities the Division of Facility Services related to charitable bingo. Additional or expanded responsibilities include the following: enforcement of charitable bingo laws including suspending or revoking licenses, expands auditing requirements of charitable organizations bingo records, adds charitable game tickets as an allowable game, and creates incentives which will encourage additional charitable organizations to use charitable bingo as a fund raising tool.

**B. Assumptions and Methodology**

1. Expenditures

This fiscal note assumes that the Division of Facility Services will need six positions and their related support costs, including the one position already in place, to implement the proposed legislation. The

[2] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 45.

six positions are as follows: upgrades the existing position from an administrative assistant to an administrative officer to supervise the charitable bingo unit; adds two clerical staff to process the increased paper work; adds two field investigators to monitor the charitable bingo and investigate complaints; and adds one accounting technician to handle the increased audit responsibilities.

The salaries and benefits for the six positions have been increased over the five period of the fiscal note to reflect the following inflation factors:

| | |
|---|---|
| 1997-98 | 3.9% |
| 1998-99 | 3.4% |
| 1999-00 | 3.4% |
| 2000-01 | 3.5% |
| 20001-02 | 3.6% |

The support costs for the six positions are held constant throughout the five year time period. In addition, the expenditures for 1997-98 have been adjusted to reflect the December 1, 1997 effective date.

2. Revenues

This fiscal note assumes that the number of charitable bingo licenses will increase significantly under the changes contained in the proposed legislation. Current annual revenues are $32,000 (320 licenses times the $100 license fee).

The proposed legislation adds an additional game called charitable game tickets and requires that a charitable organization must get a charitable bingo license and a charitable game ticket license to offer both games. This fiscal note assumes that charitable organizations will get both licenses in order to provide both games. This assumption doubles the number of licenses issued.

In addition, this fiscal note also assumes that the number of charitable bingo licenses will increase by 70% over the next five years. The 70% increase assumption is based on the following incentives in the proposed legislation which will encourage charitable organizations to use charitable bingo to raise funds: elimination of the beach bingo competition, increased jackpots and weekly prizes, increased number of game hours per session, and the addition of the charitable game tickets. The following chart documents the application of the 70% increase in licenses:

| Licenses | 1996-97 | 1997-98 | 1998-99 | 1999-00 | 2000-01 | 2001-02 |
|---|---|---|---|---|---|---|
| **Regular Bingo** | 320 | 400 | 480 | 512 | 544 | 544 |
| **Charity Game** | 0 | 400 | 480 | 512 | 544 | 544 |
| **Total** | 320 | 800 | 960 | 1024 | 1088 | 1088 |
| **Increase Over 1996-97** | | 25% | 25% | 10% | 10% | 0% |

The proposed legislation allows two levels of licenses for charitable bingo and charitable game tickets: a $200 Class A license for operating one game session a week and a $300 Class B license fee for two game sessions per week. This fiscal note assumes $250 per license to determine how much revenue will be generated because the number of organizations receiving Class A or Class B licenses cannot be predicted. The revenue estimates are derived by multiplying the number of estimated licenses times $250.

*Judicial Branch*

The Judicial Branch believes this bill will have no substantial impact on the court system. Although this bill adds or amends many provisions, violations of which can be a crime, the Judicial branch expects that the organizations subject to this law would comply with its provisions. Based on this expectation, few cases would be affected. Any new cases, can be absorbed within existing court resources.

*Department of Correction*

The Judicial Branch estimates that organizations subject to this law would comply with its provisions and that this bill would result in few new cases of incarceration. Therefore, the Sentencing and Advisory Policy Commission estimates this bill to have no significant impact on the state prison system. This bill establishes both a Class I felony penalty and a misdemeanor penalty. The following explains the effects the Class I felony penalty noted in this bill would have on the state prison system. For example, if there were 10 convictions for this offense each year, this could increase prison populations by one inmate. If there were 30 convictions for this offense each year, this could increase prison populations by two inmates. Any additional inmates convicted of a Class I felony under this bill, can be absorbed within existing state prison resources.

This bill also establishes a misdemeanor penalty. Since the Judicial Branch estimates that few cases would result from this bill, the Sentencing Commission notes there will not be a significant fiscal impact on the state prison system. The Sentencing Commission also notes there will be only a small impact on county jail populations.

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

**TECHNICAL CONSIDERATIONS:** None.

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Andy Willis, L. Carol Shaw
**APPROVED BY:** Tom L. Covington**TomC**
**DATE:** 05/07/97

# Beach Bingo - A North Carolina Tradition

Lewis Grizzard, a great American, once said that "he was American by birth and a Southerner by the grace of God". I feel the same way with the additional benefit of being from North Carolina. I love my home state and all the wonderful things that are found in great abundance here. We have many traditions here such as great ACC basketball, the Durham Bulls, shag dancing at the beach and Beach Bingo. I don't know of any person who has ever gone to the beach either as a child or an adult that has not spent time enjoying playing Beach Bingo. With a few differences, this same game, still being enjoyed by thousands of North Carolineans, is in jeopardy of becoming a thing of the past. How could this have happened? We, the people who still enjoy playing this recreational game, wonder if the reason it is being made illegal is because some unscrupulous owners have violated the existing bingo laws and for what ever reasons are not prosecuted. If this is the reason, what would be the next recreational business to go? Is the rationale in this particular situation that if someone violates the law, don't prosecute them, just close all businesses that offer the same type of entertainment? I certainly hope not. Beach bingo has for many years been one of the main sources of entertainment for senor citizens and people with disabilities. The crowds are small, the cost to play is negligible compared with the cost to play Charity bingo, there is a family atmosphere where friends are made and kept for years and more importantly this is a entertainment facility that is open nightly and not only once or twice a week. When you talk about making this North Carolina tradition an illegal activity, you are in essence talking about taking away one of the rights of law abiding citizens who just want to enjoy one of the entertaining pleasures of their life. Please consider the feelings of your constituents and thousands of other North Carolineans who regularly play beach bingo when you vote on Senate Bill 893. Just vote NO and keep this North Carolina tradition from becoming a thing of the past.

VISITOR REGISTRATION SHEET

SENATE Judiciary — May 8 - 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| ROGER FRANKE | ARROW INTERNATIONAL |
| EARL DAVIS | N. RALEIGH OPTIMIST CLUB |
| ALEXANDRE ZANDAMELA | INTERNATIONAL VISITOR, MOZAMBIQUE |
| Dr. Muhmed H. Masalha | Jordan Parliamen. |
| W Randall Stroud - Bryant, Patterson | Secretary General. |
| Jenny McLaurin | — |
| Melissa Southerland | — |
| Viola Brinkley Hargett | — |
| Karen Wall | — |
| Rosalinda Hinson | BORED |
| Doris Mason | N. Ral-optli-Mrs. club / Dinner Optl. Club |
| Bob Lubitz | Governors Crime Commsn |
| Joe Stewart | CCPS |
| BEN T. PERRY III 12 WILLOW CREEK CIR. DURHAM, NC 27705 | Post #7 Amer Legion - 501 Bingo |
| Deborah Ross | ACLU |
| Bill SLOGGRN | NCBA. |
| Eddie Caldwell | NC Sheriffs Assn / NC Law Enf. Offs. Assn. |
| John Aldridge | N.C. Dept. of Justice |
| Dan Kapler | NC SBI |
| George Reed | NC Council of Churches |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Dennis Patterson | AP |
| Dorothy Wilson | |
| Jessica Cooley | |
| Christena Hepp | |
| Deajuniane Hepp | |
| Timothy Turbas | |
| Kenneth M. Lee | |
| Gracie McCullers | |
| Tapsie McCullers | |
| Otis Carter | Carter & Assoc. |
| Woody Wall | Brooks, Wilkins, Wall: Lees, PA |
| Mark Lewis | NCCBA |
| Betty Pitts | American Legion Post #11 Goldsboro |
| Archie L. Hargett | Regular Veterans Association & Army & Navy Union |
| Ed Lawson | V.F.W. Winston Salem. N.C. |
| John Poliszuk | Laurence Berky & Associates, Inc. |
| Mary Magnuson | NAFCM |
| Larry Beasley | NCCBA |
| Pat Patterson | N.C.C.B.A. |
| Brenda Brewer | NCCBA |
| Jane O. Gray | DOJ |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Heather Stewart | NCGA |
| Kim Smith | NCLM |
| Brenda Dougherty | Sprint |
| [illegible] | Adams Inc |
| John McInnis | Masonic Lodge 791 |
| L L Boker | Home |
| Lori Ann Harris | Sanford Holshouser |
| Durwood Landingham | Norfolk South |
| Malachi Parker | Cokenwell |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# MAY 13, 1997

The Senate Judiciary Committee met on Tuesday, May 13, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hunter to explain **House Bill 191** - AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.

Senator Lucas moved to give the bill a favorable report. The motion carried by voice vote.

Representative Hunter was recognized to explain **House Bill 192** - AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

Senator Rucho moved to give the bill a favorable report. The motion carried by voice vote.

Representative Neely was recognized to explain **House Bill 174** - 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 OF THE DEFENDANT SERVED TIME AWAITING TRIAL.

John Madler, with the N. C. Sentencing Commission, was recognized to speak on the bill.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

Representative Neely was recognized to explain **House Bill 175** - 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.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 676** - AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH THE FEDERAL LAW.

The discussion of the Proposed Committee Substitute for Senate Bill 676 adopted at the May 8, 1997 meeting was continued..

The following people were recognized to speak on the bill:

Jane Gray - Attorney General's Office
Emily Johnson - Legislative Research Staff
Andy Willis - Legislative Fiscal Research Staff

Senator Rand moved to amend the Proposed Committee Substitute on Page 8, Line 44 and Page 9, Line 1. The motion carried by voice vote. (Amendment attached.)

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended, roll it into a new Committee Substitute and re-refer it to the Finance Committee. The motion carried by voice vote.

Representative Hackney was recognized to explain **House Bill 448** - AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 448 for discussion. The motion carried by voice vote.

Because of a lack of time, it was requested that this bill be brought back to the Committee at a future meeting.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 13, 1997

| | | |
|---|---|---|
| SB 676 | Sex Offender Laws/Fed. Compliance | Odom |
| HB 174 | Active Sentence/Trial Waiting Time | Neely |
| HB 175 | Structured Sentencing/Technical Amends. | Neely |
| HB 191 | Certified Copies/Custody & Wills | Hunter |
| HB 192 | Courts Commission Membership | Hunter |
| HB 448 | Governor's DWI Initiative | Hackney |

**North Carolina General Assembly**
**Legislative Services Office**

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May 13, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Karen Cochrane-Brown, House Judiciary I Co-Counsel

**RE:** **HOUSE BILL 191 - CERTIFIED COPIES/ CUSTODY DECREES AND WILLS** - Representative Robert Hunter

House Bill 191 would amend the law for authenticating copies of certain documents in child custody matters and certain will situations to permit the filing of certified copies in addition to exemplified copies. This bill is a recommendation of the North Carolina Courts Commission.

Sections 1 and 2 of the bill amend G.S. 50A-15 and 50A-16 respectively, to allow for the filing and enforcement of certified copies of custody decrees, as well as the exemplified copies currently permitted by statute. Both methods are used to authenticate copies of official records. Exemplification is an older method of authentication which requires three signatures, including the clerk, a judge who verifies that the clerk is the clerk, and the clerk's verification that the judge is a judge. The procedure does not exist in many other states. Thus, a custody order from a state which does not exemplify documents cannot be recorded in this State. This bill would allow such a document to be recorded if it were a certified true copy. Certification merely requires that the official custodian of the record certify by signature and stamp or seal that the copy is a true copy of the original.

Section 3 of the bill amends G.S. 31-30 which deals with copies of certain old wills, specifically wills executed prior to January 1, 1875 and recorded prior to January 1, 1888. The current statute allows only for proof of these records by exemplified copies. The amendment would add certified copies.

This act would become effective October 1, 1997.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

## § 8-35. Authenticated copies of public records.

All copies of bonds, contracts, notes, mortgages, or other papers relating to or connected with any loan, account, settlement of any account or any part thereof, or other transaction, between the United States or any state thereof or any corporation all of whose stock is beneficially owned by the United States or any state thereof, either directly or indirectly, and any person, natural or artificial; or extracts therefrom when complete on any one subject, or copies from the books or papers on file, or records of any public office of the State or the United States or of any corporation all of whose stock is beneficially owned by the United States or by any state thereof, directly or indirectly, shall be received in evidence and entitled to full faith and credit in any of the courts of this State when certified to by the chief officer or agent in charge of such public office or of such office of such corporation, or by the secretary or an assistant secretary of such corporation, to be true copies, and authenticated under the seal of the office, department, or corporation concerned. Any such certificate shall be prima facie evidence of the genuineness of such certificate and seal, the truth of the statements made in such certificate, and the official character of the person by which it purports to have been executed.

(1891, c. 501; Rev., s. 1617; C.S., s. 1780; 1939, c. 149.)

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 191*

Short Title: Cert. Copies/Custody & Wills. (Public)

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

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50A-15 reads as rewritten:

"**§ 50A-15. Filing and enforcement of custody decree of another state.**

(a) An exemplified copy or a certified true copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this State. The clerk shall treat the decree in the same manner as a custody decree of a court of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or such party's witnesses."

Section 2. G.S. 50A-16 reads as rewritten:

"**§ 50A-16. Registry of out-of-state custody decrees and proceedings.**

The clerk of each superior court shall maintain a registry in which ~~he~~ the clerk shall enter the following:

(1) Exemplified and certified true copies of custody decrees of other states received for filing;

(2) Communications as to the pendency of custody proceedings in other states;

(3) Communications concerning a finding of inconvenient forum by a court of another state; and

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding."

Section 3. G.S. 31-30 reads as rewritten:

"**§ 31-30. Validation of wills recorded without probate by subscribing witnesses.**

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies <u>or certified true copies</u> thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud."

Section 4. This act becomes effective October 1, 1997.

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May 13, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Karen Cochrane-Brown, House Judiciary I Co-Counsel

**RE:** **HOUSE BILL 192 - COURTS COMMISSION MEMBERSHIP -** Representative Hunter

House Bill 192 would add four additional members to the North Carolina Courts Commission, one each to be appointed by the Governor, Chief Justice of the Supreme Court, the President Pro Tempore of the Senate and the Speaker of the House, all to be public members who are not attorneys or officers or employees of the Justice Department. The bill was recommended by the North Carolina Courts Commission.

Section 1 of the bill amends G.S. 7A-506 to increase the membership of the North Carolina Courts Commission from 24 to 28 members. The Chief Justice of the Supreme Court, the Governor, the Speaker of the House and the President Pro Tempore of the Senate would each be given an additional appointment to the Commission. This section also provides for the staggering of the terms of the new members with the Governor and Speaker's appointees being for 4-year terms and the Chief Justice and President ProTemp's appointees being for initial 2-year terms.

Section 2 amends G.S. 7A-507 to provide that of the three ex officio members of the Commission, only the Administrative Officer of the Courts will have no vote. Under present law, the representatives of the N. C. State Bar and the N. C. Bar Association, as well as the Administrative Officer of the Courts have no vote.

An identical bill was introduced during the 1996 Regular Session, also at the request of the Courts Commission. That bill passed the House, but did not reach the Senate floor before the General Assembly adjourned, sine die.

This act would become effective when it becomes law.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 192

Short Title: Courts Commission Membership. (Public)

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

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-506 reads as rewritten:

"**§ 7A-506. Creation; members; terms; qualifications; vacancies.**

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of ~~24~~ 28 members, ~~six~~ seven to be appointed by the Governor, ~~six~~ seven to be appointed by the Speaker of the House of Representatives, ~~six~~ seven to be appointed by the President Pro Tempore of the Senate, and ~~six~~ seven to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, ~~and~~ two shall be district court ~~judges.~~ judges, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(c) Of the ~~six~~ seven appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, ~~and~~ at least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the nonattorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(d) Of the ~~six~~ seven appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at

least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the non-attorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(e) Of the ~~six~~ seven appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at least one shall be a ~~magistrate.~~ magistrate, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. The two public members appointed by the Governor and the Speaker of the House of Representatives shall be appointed for four-year terms to begin July 1, 1997. The two public members appointed by the Chief Justice and the President Pro Tempore of the Senate shall be appointed for two-year terms to begin July 1, 1997. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed."

Section 2. G.S. 7A-507 reads as rewritten:

"**§ 7A-507. Ex officio members.**

The following additional members shall serve ex officio: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. ~~Ex officio members have no vote.~~ The Administrative Officer of the Courts has no vote."

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

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May 13, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 174 - ACTIVE SENTENCE / TRIAL WAITING TIME**
Representative Neely

House Bill 174 would allow a judge to impose an active sentence for a misdemeanor conviction when the offense class and prior conviction level would ordinarily require only a Community or Intermediate punishment, if the active sentence would be equal to or less than the amount of time the defendant has already spent confined while awaiting resolution of the charge. District Court judges have reportedly told the Sentencing Commission that in some first time offender cases the time spent in jail awaiting trial is sufficient punishment for the offense. A copy of the misdemeanor punishment chart is attached.

This bill is effective when it becomes law.

| MISDEMEANOR OFFENSE CLASS | PRIOR CONVICTION LEVELS | | |
|---|---|---|---|
| | LEVEL I | LEVEL II | LEVEL 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. |

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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.

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May 13, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 175**
**STRUCTURED SENTENCING TECHNICAL AND CLARIFYING AMENDMENTS**
Representative Neely

House Bill 175 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 *supervised or unsupervised* probation or *post-release supervision*, the defendant may receive an additional point.

**Section 8** provides that in misdemeanor sentencing, 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 bill would become effective December 1, 1997 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 175
Committee Substitute Favorable 4/7/97

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<br>0 Pts | II<br>1-4 Pts | III<br>5-8 Pts | IV<br>9-14 Pts | V<br>15-18 Pts | VI<br>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 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

S D

SENATE BILL 676*
Proposed Committee Substitute S676-CSRV-003
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 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), 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.

Use and Definition of "predatory" eliminated; description incorporated into this definition

~~(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.

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.

"§ 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.~~ 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

(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, **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.

* Senate Added

(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, 1998.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-13-97

S. B. No. 676 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
Sen. ) Rand

moves to amend the bill on page ~~page~~ 8, line 44

( ) WHICH CHANGES THE TITLE

by ~~Knowingly and with the intent to violate the provisions of this Article~~

and on page 9, line 1

by deleting the word "Article" and substituting "Article"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 448*
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/28/97

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.

(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 (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 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. 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.

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May 13, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan and Brenda Carter, Committee Co-Counsel and Susan Hayes, House Judiciary II Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 448 - GOVERNOR'S DWI INITIATIVE/AB** - Representative Hackney

The Senate Proposed Committee Substitute for House Bill would strengthen the law which allows seizure of vehicles when used in driving while impaired and while the license has been revoked for an impaired driving offense, increases the penalty for driving while impaired, increases the mandatory administrative license revocation period for driving while impaired, strengthens the punishment for habitual impaired driving, and makes other changes related to the enforcement of the DWI laws.

**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 for driving while impaired 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 the greater weight of the evidence that he or she is an innocent party, in which case the judge may order the vehicle released to the registered owner under specified conditions.

*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 the innocent parties' express or implied permission.

*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 a judicial sale with notice to the registered owner and lienholders 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 the officer 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. Also includes provisions for returning vehicle if no probable cause is found or the defendant is not found guilty.

## 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 that requires the defendant to serve a minimum of 7 days. (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 other unresolved pending DWI offenses or intervening DWI convictions; 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 which shall not be suspended.

## Part VIII - Effective Date

The bill is effective December 1, 1997 and applies to offenses committed on or after that date.

*Prepared in part from summary in the IOG's Daily Bulletin*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H448-CSRU-001
**PROPOSED SENATE COMMITTEE SUBSTITUTE**
HOUSE BILL 448
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/28/97
**THIS IS A DRAFT 12-MAY-97 20:16:48**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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 the greater weight of the evidence, that he or

she is an innocent party as defined by subsection (f) of this section, in which case the trial judge shall 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 the greater weight of the 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 a registered owner is an 'innocent party', a district court 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 while that person's license was revoked. However, the district court 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 the greater weight of the 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 interest in the motor vehicle 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 express or implied permission.

(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. -- A district court judge shall order a forfeited vehicle released to the holder of a security interest if he determines by the greater weight of the 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. 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. -- 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 within 72 hours of the seizure of the vehicle.

(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 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 in accordance with this section. The magistrate may request additional information and may hear from the operator if the operator 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 or the holder of a security interest in 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 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 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 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. 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 Registered Owner. -- An innocent party registered owner may apply to a district court judge 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. -- A district court judge may order a forfeited vehicle released to the holder of a security interest if he determines, by the greater weight of the 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. If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released. A determination under this section releasing the vehicle authorizes the driver, registered owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Any towing or storage fees incurred for motor vehicles returned or released 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 district court 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 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 the registered owner at the address shown on the motor vehicle's registration and at any other address of the registered 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

shown on the motor vehicle title 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 registered 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."

Section 1.5. Article 2 of 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 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 and 20-28.5."

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."

Section 1.7. 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.

(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(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~~ 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 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. 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.

**TABLE 2**
**ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION**

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| AL | -- | -- | -- | -- | 48 CH | 60 D | -- | 20 D | -- | S-90 D | R-1 Y | R-3 Y |
| AK | 250 | 500 | 1,000 | 72 CH | 20 D | 120 D[48] | -- | -- | -- | R-30 D | R-1 R | R-10 Y |
| AZ | 250 | 500 | -- | -- | 30 CD[15] | 6 M | -- | -- | -- | S-90 D[20] | R-1 Y[44] | R-3 Y |
| AR | 150 | 400 | 900 | -- | 7 D | 90 D | -- | -- | -- | --[46] | --[46] | --[46] |
| CA | 390 | 375 | 390 | -- | 48 H[1,2] | 30 D[1,2] | -- | 10 D[2] | --[2] | -- | S-30 D | R-3 Y |
| CO[X] | -- | -- | -- | 5 D[31] | 7 D | 7 D | (48 H)[18] | (60 H)[18] | (60 H)[18] | -- | R-1 Y[47] | R-2 Y[47] |
| CT[X] | -- | -- | -- | 48 CH | 10 D | 120 D | 100 H | -- | -- | --[42] | --[42] | --[42] |
| DE | -- | -- | -- | -- | 60 D[54] | 3 CM[54] | -- | -- | -- | --[55] | R-6 M[55] | R-6 M |
| DC[X] | -- | -- | -- | -- | -- | -- | -- | -- | -- | R-6 M | R-1 Y | R-2 Y |
| FL | -- | -- | -- | -- | 10 D[10] | 30 D[10] | (50 H)[18] | -- | -- | -- | R-12 M | R-24 M |
| GA | 300 | 600 | 1,000 | -- | 48 H | 10 D | 40 H | 80 H | 20 D | -- | S-120 D | R-5 Y |
| HI | 150[3] | 500 | 500 | 48 H[3] | 48 CH | 10 D[10,49] | 72 H[3] | 100 H[49] | -- | S-30 D | S-1 Y | R-1 Y |
| ID | -- | -- | -- | -- | 10 D[13] | 30 D | -- | -- | -- | S-30 D | S-1 Y | S-1 Y |
| IL | -- | -- | -- | -- | 48 CH | 48 CH | -- | 100 H | 30 D | -- | -- | -- |
| IN | -- | -- | -- | -- | 5 D[4] | 5 D[4] | -- | 10 D | 10 D | S-30 D | S-1 Y | S-1 Y |
| IA | 500[6] | 750 | 750 | -- | 7 D[7] | 30 D | -- | -- | -- | R-30 dys[50] | R-1 Y | R-1 Y |
| KS | -- | 500 | -- | 48 CH | 48 CH[56] | 48 CH[56] | 100 H | -- | -- | S-30 D | S-1 Y | S-1 Y |
| KY | 200[3] | -- | -- | 48 H[3] | 7 D | 30 D | 48 H[3] | -- | -- | S-30 D | R-12 M | R-24 M |
| LA | -- | -- | -- | 2 D[23] | 15 D[23] | 6 M[23] | 4 D | 30 D | -- | -- | --[41] | --[41] |





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Digest of State Alcohol-Highway Safety
January 1, 1996

TABLE 2 (continued)
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| ME | 400 | 600 | 1,000 | 48 H[17] | 7 D | 30 D | -- | -- | -- | S-60 D[24] | S-18 M[24] | S-4 Y[24] |
| MD[Y] | -- | -- | -- | -- | 48 CH | 48 CH | -- | 80 H | 80 H | -- | -- | -- |
| MA | -- | -- | -- | -- | 30 D[8,25] | 150 D[8,25] | -- | -- | -- | S-45 D | R-6 M | R-2 Y |
| MI[X] | 100[32] | 200[32] | 500[32] | -- | 48 CH | 1 Y | -- | -- | -- | -- | R-1 Y | S-5 Y |
| MN | 140 | 600 | 600 | -- | 48 CH[39] | 48 CH[39] | -- | 80 H[26] | 80 H[26] | R-15 D | R-15 D | R-15 D |
| MS | 200 | 400 | 500 | -- | -- | -- | -- | -- | -- | S-30 D | S-1 Y | S-3 Y |
| MO | -- | -- | -- | -- | 48 CH | 48 CH | -- | 10 D | 10 D | S-30 D[21] | R-2 Y[21] | R-3 Y[21] |
| MT | -- | -- | -- | 24 CH[9] | 3 D[9,10] | 10 D[9,10] | -- | -- | -- | -- | R-3 M[29] | R-3 M[29] |
| NE | -- | -- | -- | -- | 48 H[38] | 7 D[38] | -- | -- | -- | R-30 D[38] | R-6 M[38] | R-1 Y[38] |
| NV | 200 | 500 | 2,000 | 2 D[11] | 10 D[12] | 1 Y[13] | 48 H | -- | -- | R-45 D[-] | R-1 Y | R-1.5 Y |
| NH | 300 | 500 | 500 | -- | 10 D[14] | 10 D[14] | -- | -- | -- | R-90 D | R-3 Y | R-3 Y |
| NJ | 250 | 500 | 1,000 | --[15] | 48 CH | 90 D[27] | -- | (30 D)[18] | (90 D)[18] | R-6 M[23] | R-2 Y[22] | R-10 Y[22] |
| NM | -- | -- | -- | -- | 48 CH | 48 CH | -- | -- | -- | -- | R-1 Y | R-5 Y |
| NY[Z] | 500 | 1,000 | 1,000 | -- | -- | -- | -- | -- | -- | -- | R-1 Y | R-1 Y |
| NC | -- | -- | -- | -- | 7 D | 7 D | -- | -- | -- | -- | R-2 Y | R-3 Y |
| ND | 250 | 500 | 1,000 | -- | 4 D[4] | 60 D[4] | -- | 10 D | -- | S-30 D | S-365 D | S-2 Y |
| OH | 200 | 300 | 500 | -- | 5 CD[45] | 15 CD[45] | -- | -- | -- | S-15 D | S-30 D | S-180 D |
| OK[X] | -- | -- | -- | -- | --[28] | --[28] | -- | --[28] | --[28] | -- | -- | -- |
| OR | 565 | 565 | 565 | 48 CH | 48 CH | 48 CH | 80 H | 80 H | 80 H | -- | S-90 D | S-1 Y |

**TABLE 2 (continued)**
**ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION**

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| PA | 300[37] | 300[37] | 300[37] | 48 CH[50] | 30 D[50] | 90 D[50] | -- | -- | -- | S-1 M[5] | S-12 M | S-12 M[5] |
| PR | -- | -- | -- | -- | 24 CH | 30 D | -- | 10 D | -- | -- | -- | -- |
| RI | 100 | 400 | 400 | -- | 10 D[4] | 6 M[4] | -- | -- | -- | S-3 M | S-1 Y | S-2 Y |
| SC | 200 | 1,000 | 3,500 | 48 H[45] | 48 H[45] | 60 D[45] | 48 H[45] | 10 D[45] | -- | -- | S-1 Y | S-2 Y |
| SD | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | R-1 Y[41] | R-1 Y |
| TN | 350 | 600 | 1,100 | 48 H | 45 D | 120 D | -- | -- | -- | -- | R-2 Y | R-3 Y |
| TX | -- | -- | -- | -- | 72 H[16] | 10 D[16] | -- | -- | -- | -- | -- | -- |
| UT | 700 | 800 | 1,000[51] | 48 CH | 240 CH | 720 D | 24 H | 80 H | 240 H | S-90 D | R-1 Y | R-1 Y |
| VT | -- | -- | -- | -- | 48 CH | -- | -- | -- | -- | S-90 D | S-18 M | R-2 Y |
| VA | -- | -- | -- | -- | 48 H | 30 D | -- | -- | -- | -- | R-2 Y[24] | R-3 Y |
| WA | 350[4] | 500[4] | 1,000[4] | 24 CH[4] | 30 D[4] | 90 D[4] | -- | -- | -- | S-30 D[4] | R-1 Y[4] | R-2 Y[4] |
| WV | 100[19] | 1,000[19] | 3,000[19] | 24 H[19] | 6 M[19] | 1 Y[19] | -- | -- | -- | R-30 D[40] | R-1 Y[40] | R-1 Y[40] |
| WI | 150 | 300 | 600 | -- | 5 D | 30 D | -- | -- | -- | -- | R-60 D | R-90 D |
| WY | -- | -- | -- | -- | 7 D | 7 D | -- | -- | -- | -- | S-1 Y | R-3 Y |
| TOTALS | 27 | 27 | 25 | 17 | 47 | 46 | 10 | 15 | 8 | S-18<br>R-9 | S-16<br>R-28 | S-12<br>R-32 |

[X]Mandatory sanctions for the offenses of driving while under the influence and illegal per se.
[Y]Mandatory sanctions for the offense of driving while intoxicated.
[Z]Mandatory sanctions for the offenses of driving while intoxicated and illegal per se.

C=Consecutive, H= Hour(s), D=Day(s), M=Month(s), Y=Years(s), S=Suspension, R=Revocation
Important. A blank space in this table does not mean that a State does not have a sanction. It only means that a State does not have a mandatory sanction.

TABLE 2 (continued)
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

[1]The 48 hours (2nd off) and 30 days (3rd off) are not necessarily served consecutively. The sanctions listed are for non-injury offenses.
[2]48 consecutive hours of imprisonment or 10 days of community service became mandatory when the Dept. of Motor Vehicles certified that an application for 23 USC §408 grant funds has been submitted to the U.S. Dept. of Transportation.
[3]The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.
[4]Where the offender's alcohol concentration was <0.15.
[5]For a 1st off, 1 mo mand susp if defendant is accepted into the Accelerated Rehabilitation Disposition program. For a 3rd off, revocation could be 5 yrs under the habitual offender law.
[6]Not more than 200 hours of community service in lieu of the fine.
[7]This sentence may not be suspended; however, the statute is silent as to probation.
[8]This sanction may be served in a residential treatment facility.
[9]This sanction only applies to driving while under the influence offenses.
[10]Must serve 48 consecutive hours.
[11]One day imprisonment or 24 hrs of community service if rehabilitation is taken.
[12]48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the jail term is reduced to 1 dy or, as an alternative, the offender may perform 24 hrs of community service.
[13]48 con hrs if the defendant is eligible for the work release program.
[14]Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center.
[15]Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.
[16]As a part of community supervision.
[17]Provided the defendant either (1) had an alcohol concentration of 0.15 or more, (2) was driving 30 MPH over the speed and had an alcohol concentration of 0.08 or more, (3) was eluding a police officer and had an alcohol concentration of 0.08 or more, (4) refused to submit to a chemical test or (5) was driving a vehicle with a passenger under 16 years old.
[18]Mandatory community service regardless of whether there is a mandatory imprisonment sanction.
[19]Applies to DWI offs that are not related to injury or death.
[20]May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
[21]Applies only to driving while intoxicated offenses.
[22]The law states that the right to operate a motor vehicle is "forfeited".
[23]Home incarceration is possible.
[24]I. This susp action is not mand in all situations. A temporary restricted license may be issued only for the purpose of attending either an alcohol education or treatment program. II. If a 1st offender participates in an alcohol or drug treatment program, the mand susp period may be less than 60 dys. III. If an ignition interlock is used, the mand susp periods are respectively for a 2nd off 1 yr and for a 3rd off 2 yrs.
[25]Work release is available for this period of time.
[26]This alternative does not apply to offenders who have had either 5 prior drunk driving offense convictions within 10 years or 7 prior convictions within 15 years.
[27]Not more than 90 dys as an alternative to imprisonment.
[28]If there is no imprisonment sanction, the defendant must serve either 48 con. hrs. of inpatient rehabilitation/treatment or 10 dys of community service.
[29]This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
[30]90 dys mandatory if the defendant has refused to submit to a chemical test under the implied consent law.
[31]Applies only to a 1st illegal per se conviction.
[32]Possible
[33]Followed by a period of "house arrest" with electronic monitoring.
[34]"House arrest" may be possible in lieu of a jail sentence.
[35]3 months with participation in the ignition interlock program.
[36]Followed by work release for 3 dys for a 2nd off and 88 dys for a 3rd off.
[37]Plus the following mandatory surcharges: 1st off-$50; 2nd off-$100; and, 3rd off-$200.
[38]The mandatory sanctions given are based upon a person receiving probation.
[39]30 dys imprisonment with 48 consecutive hours.
[40]Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.
[41]There is no mandatory licensing action if the offender is placed on probation and is allowed to participate in the ignition interlock program.
[42]License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".
[43]Home detention may be used in lieu of this sanction.
[44]An amendment to the law in 1993 may have eliminated this mandatory revocation.
[45]If treatment is authorized by the court, confinement is only for 3 days in a medical facility.
[46]Licensing sanctions are via the administrative per se law.
[47]The mandatory revocation periods for 2nd and 3rd offenses may be reduced to respectively 3 mos and 6 mos if the offender participates in the ignition interlock program.
[48]If 3rd off was w/n 5 yrs.
[49]The sanctions given apply only to driving either (1) while under the influence of intoxicating liquor or (2) with an alcohol concentration ≥0.08. For driving while under the influence of a controlled substance, a 2nd offender, in lieu of imprisonment, must perform at least 80 hrs of community service; a 3rd offender only has to serve 48 con hrs of confinement.
[50]House arrest or in-patient rehabilitation may be used as alternatives to this imprisonment sentence.
[51]For a 3rd offense after 7/1/96, $2,000 or $1,500 if the court suspends sentence.

# IMPOUNDMENT, REGISTRATION WITHDRAWAL OR CONFISCATION OF A VEHICLE FOR A DWI OFFENSE

| IMPOUNDMENT[1] | REGISTRATION WITHDRAWN[1] | | CONFISCATION | |
|---|---|---|---|---|
| California | Arizona | North Dakota | Alaska[5] | North Dakota[8] |
| Florida | Indiana[6] | Ohio[19] | Arizona[8] | Ohio[12] |
| Illinois[2] | Kansas[20] | Oregon[5] | Arkansas[11] | Pennsylvania[15] |
| Iowa[9] | Maine[5] | Rhode Island | California[10] | Rhode Island[16] |
| Missouri[3&21] | Minnesota | South Dakota | Georgia[12] | South Carolina[7] |
| Montana[4] | New | Virginia | Maine[9] | Tennessee[9] |
| Ohio[18] | Hampshire[13] | Wyoming[5] | Minnesota[16] | Texas[8] |
| Oregon[5] | New York | | Missouri[21] | Washington[13] |
| Wisconsin[17] | | | Montana[16] | Wisconsin[17] |
| | | | New York[14] | |
| TOTAL=9 | TOTAL=15 | | TOTAL=19 | |

[1]The column titled "Impoundment" also includes States that immobilize vehicles. The column titled "Vehicle Registration Withdrawn" also includes States that impound license plates.
[2]Limited impoundment following a DWI arrest.
[3]Vehicle impoundment for persons under 18 who are convicted of a DWI offense.
[4]Vehicle impoundment only if the driver was under 18 years old.
[5]For a 2d offense w/n 6 years.
[6]For a subsequent DWI offense conviction, registration plates suspended.
[7]For a 4th DWI offense conviction within 10 years.
[8]For three (3) or more DWI offense convictions.
[9]For a 2nd or subsequent DWI offense conviction.
[10]Vehicle is confiscated if there are 2 previous DWI offense convictions within 7 years.
[11]For a 4th DWI offense conviction within 3 years.
[12]For a 4th DWI offense conviction within 5 years.
[13]Applies only for 2nd or subsequent DWI offense convictions.
[14]Possible for a 2nd or subsequent DWI offense convictions.
[15]Applies via "common law".
[16]For a 3rd or subsequent DWI offense conviction within 5 years.
[17]For a 3rd or subsequent DWI offense conviction within ten (10) years.
[18]For a 2nd offense within 5 years.
[19]Registration withdrawal applies to a 2nd offense and 3rd offenses within 5 years. For a 3rd offense within 5 years, the vehicle will also be "immobilized".
[20]License plate revocation for a 4th or subsequent offense.
[21]State law provides that cities may enact forfeiture ordinances.



Revised 11/1/96

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, May 13, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **174** Active Sentence/Trial Waiting Time
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **175** Structured Sentencing/Technical & Clarifying Amendments
Sequential Referral: None
Recommended Referral: None

H.B. **191** Certified Copies/Custody & Wills
Sequential Referral: None
Recommended Referral: None

H.B. **192** Courts Commission Membership
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

# REVISED REPORT

Tuesday, May 20, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS) **402** Expunge Infractions
Sequential Referral: None
Recommended Referral: None

H.B. **465** Voluntary Dismissal/Notify Defendant
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **676** Sex Offender Laws/Federal Compliance
Draft Number: PCS 1808
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**MAY 15, 1997**

The Senate Judiciary Committee met on Thursday, May 15, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Justus to explain **House Bill 527** - AN ACT TO ENHANCE THE ROLE OF OPTOMETRISTS IN MEDICAL COST CONTAINMENT THROUGH REVISION OF THE HOSPITAL PRIVILEGES LAW, TO REPEAL THE REQUIREMENT FOR AN OPTOMETRIST TO COLLABORATE WITH A PHYSICIAN IN THE USE OR PRESCRIPTION OF CERTAIN PHARMACEUTICAL AGENTS, TO ESTABLISH PEER REVIEW FOR OPTOMETRISTS, AND TO ESTABLISH AN OPTOMETRIST PRIVILEGE.

Senator Conder, sponsor of the Senate companion bill, was recognized to speak on the bill.

The following people spoke in favor of the bill:

Dr. Gale Martin, Southern Pines, Ophthalmologist
Dr. Mark Ralston, Greensboro, Ophthalmologist
Dr. Michael Clark, Mount Airy, Optometrist

The following people spoke in favor of the bill as amended:

Dr. Beth Friedland, Ocular Pharmacologist and Professor of Ophthalmology at UNC-CH
Dr. Edwin Swann
Dr. Elizabeth Kanof, Raleigh, Dermatologist
Mr. Dick Gurley, Pharmaceutical Sales
Dr. George Moore, Family Physician, Wake Forest, N. C.

Senator Lucas moved to amend the bill on Page 1, Line 6, Page 2, Line 4 and Page 2 between the Lines 8 and 9. (See attached amendment.)

Senator Condor was recognized to speak in opposition to the amendment.

The amendment failed on a show-of-hands vote by 15-5.

The following people were recognized to answer questions from the Committee:

Mr. David Worth, N. C. Pharmacy Board

Dr. Joel Banks, Ophthalmologist
Walker Reagan, Committee Counsel

Senator Rand moved to amend the bill on Page 3, Line 20. The amendment failed on a show-of-hands vote by 10-9.

Senator Condor moved to give the bill a favorable report. The motion carried by voice vote.

There being no further business, the meeting adjourned at 11:45 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 15, 1997

| | | |
|---|---|---|
| HB 527 | Optometry Changes | Rep. Justus |

**North Carolina General Assembly**
**Legislative Services Office**

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May 13, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 527 - OPTOMETRY CHANGES**
Representative Justus

House Bill 527 makes changes in the laws governing optometrists. The bill removes the requirement that a physician participate in the prescribing of pharmaceutical agents; permits hospital privileges to be granted to optometrists; authorizes peer review for optometrists; and provides for confidentiality of communications between optometrists and patients.

**Section 1** amends G.S. 90-114 by removing the requirement that an optometrist prescribing or using pharmaceutical agents other than topical agents used in examining the eye must collaborate with a licensed physician. The bill would allow optometrists to independently prescribe medication to treat "defects or abnormal conditions" of the eye and its adnexa (associated anatomic parts).

**Section 2** amends G.S. 131E-85, one of the sections of the Hospital Licensure Act that deals with hospital privileges. It permits hospital privileges to be extended to optometrists. Presently, such privileges are limited to physicians, dentists, and podiatrists. ("Dentists" is struck through and reprinted because a comma is added.)

**Section 3** amends Chapter 90 by adding a new Article 6A providing for Optometry Peer Review. It authorizes the North Carolina State Board of Examiners in Optometry to enter into agreements with the North Carolina State Optometric Society (Society) for conducting peer review activities related to the quality of health care delivered by optometrists. Such agreements shall include provisions for the Society to receive relevant information, to provide assurance of confidentiality of nonpublic information and the review process, and to require due process. Confidential patient information and other nonpublic information acquired, created, or used by the Society remains confidential and is not discoverable in a civil case. Peer review activities conducted in good faith are deemed state directed and

sanctioned and constitute state action for the purpose of anti-trust law. The Board is responsible for legal fees arising from peer review activities. *(It is not clear whose legal fees are referred to.)*

Section 4 amends Article 7 of Chapter 8 to add a new section providing that optometrists may not be compelled to disclose information acquired in rendering professional optometric services except where a judge deems such disclosure necessary to the proper administration of justice and such disclosure is not prohibited by another statute or rule. Most other statutes regarding privileged communications protect only that information acquired in rendering professional **and** *which was necessary to enable the person to render professional services.*

Section 4.1 of the bill has no legal effect; it does not make any changes to existing law.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 527
Committee Substitute Favorable 4/9/97

Short Title: Optometry Changes. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE ROLE OF OPTOMETRISTS IN MEDICAL COST CONTAINMENT THROUGH REVISION OF THE HOSPITAL PRIVILEGES LAW, TO REPEAL THE REQUIREMENT FOR AN OPTOMETRIST TO COLLABORATE WITH A PHYSICIAN IN THE USE OR PRESCRIPTION OF CERTAIN PHARMACEUTICAL AGENTS, TO ESTABLISH PEER REVIEW FOR OPTOMETRISTS, AND TO ESTABLISH AN OPTOMETRIST PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-114 reads as rewritten:

"**§ 90-114. Optometry defined.**

Any one or any combination of the following practices shall constitute the practice of optometry:

(1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or

(2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or

(3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training,

pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

~~Provided, however, in using or prescribing pharmaceutical agents, other than topical pharmaceutical agents within the definition hereinabove set out which are used for the purpose of examining the eye, the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient.~~"

Section 2. G.S. 131E-85 reads as rewritten:

"**§ 131E-85. Hospital privileges and procedures.**

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, ~~dentists~~ dentists, optometrists, and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital on a non-discriminatory basis. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals, or to offer or provide any type of care.

(b) The procedures to be followed by a licensed hospital in considering applications of ~~dentists~~ dentists, optometrists, and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

(c) In addition to the granting or denial of privileges, the governing body of each hospital may suspend, revoke, or modify privileges.

(d) All applicants or individuals who have privileges shall comply with all applicable medical staff bylaws, rules and regulations, including the policies and procedures governing the qualifications of applicants and the scope and delineation of privileges.

(e) The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the procedures followed in determining hospital privileges are in accordance with this Part and rules of the Department."

Section 3. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Optometry Peer Review.

"**§ 90-127.4. Peer review agreements.**

(a) The North Carolina State Board of Examiners in Optometry may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina State Optometric Society (Society), for the purpose of conducting peer review activities. Peer review activities to be covered

by such agreements shall be limited in peer review proceedings to review of clinical outcomes as they relate to the quality of health care delivered by optometrists licensed by the Board.

(b) Peer review agreements shall include provisions for the Society to receive relevant information from the Board and other sources, provide assurance of confidentiality of nonpublic information and of the review process, and make reports to the Board. Peer review agreements shall include provisions assuring due process.

(c) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Society pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case.

(d) Peer review activities conducted in good faith pursuant to any agreement under this section are deemed to be State directed and sanctioned and shall constitute State action for the purposes of application of antitrust laws. The Board shall be responsible for legal fees arising from peer review activities."

Section 4. Article 7 of Chapter 8 of the General Statutes is amended by adding the following new section to read:

"**§ 8-53.9. Optometrist/patient privilege.**

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4.1. G.S. 90-118(e) reads as rewritten:

"(e) The Board shall not license any person to practice optometry in the State of North Carolina beyond the scope of the person's educational training as determined by the Board. No optometrist presently licensed in this State shall prescribe and use pharmaceutical agents in the practice of optometry unless and until he (i) has submitted to the Board evidence of satisfactory completion of all educational requirements established by the Board to prescribe and use pharmaceutical agents in the practice of optometry and (ii) has been certified by the Board as educationally qualified to prescribe and use pharmaceutical agents.

Provided, however, that no course or courses in pharmacology shall be approved by the Board unless (i) taught by an institution having facilities for both the didactic and clinical instruction in pharmacology and which is accredited by a regional or professional accrediting organization that is recognized and approved by the Council on Postsecondary Accreditation or the United States Office of Education and (ii) transcript credit for the course or courses is certified to the Board by the institution as being equivalent in both hours and content to those courses in pharmacology required by the other licensing boards in this Chapter whose licensees or registrants are permitted the use of pharmaceutical agents in the course of their professional practice."

Section 5. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

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

H527-ARV-002 Page 1 of __

Date 5-15 ,1997

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Lucas

moves to amend the bill on page 1, line 6, by inserting the following after the word "AGENTS,": "TO ESTABLISH A JOINT FORMULARY COMMISSION,"; and

on page 2, lines 4 through 8 by rewriting those lines to read:
"Provided, however, in using or prescribing pharmaceutical agents, other than topical pharmaceutical agents ~~within the definintion hereinabove set out which are used for the purpose of examining the eye,~~ and other pharmaceutical agents listed in the formulary adopted by the Joint Formulary Commission under G.S. 90-114.2, the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient.'"; and

on page 2, between lines 8 and 9, by inserting the following language:

"Section 1.1. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

'**§ 90-114.1. Joint Formulary Commission established.**

(a) The Joint Formulary Commission is created as an agency of the State. The Commission consists of nine members appointed as follows:

(1) Three optometrists appointed by the North Carolina State Board of Examiners in Optometry.

(2) Three physicians appointed by the North Carolina Medical Board, one of whom is an internal medicine specialist.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

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

H527-ARV-002 

(3) Three pharmacists each with a doctorate in pharmacology appointed by the North Carolina Board of Pharmacy.

All members must be licensed to practice in and be residents of North Carolina.

(b) The terms of the first appointees to the Joint Formulary Commission are as follows:

(1) One optometrist, one physician, and one pharmacist shall each serve a term expiring June 30, 1998.

(2) One optometrist, one physician, and one pharmacist shall each serve a term expiring June 30, 1999.

(3) One optometrist, one physician, and the pharmacist shall each serve terms expiring June 30, 2000.

Thereafter, members shall serve three-year terms. Members may be reappointed. The members shall elect a chair from their membership. The first chair shall serve a term expiring June 30, 1998. Thereafter, the chair shall be elected for a one-year term.

(c) Chapter 150B of the General Statutes governs the adoption of rules by the Joint Formulary Commission.

(d) The expenses of the Joint Formulary Commission shall be paid by the appointing boards in proportion to the number of members they are authorized to appoint.'

Section 1.2. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

'**§ 90-114.2. Duties of the Joint Formulary Commission.**

(a) The Joint Formulary Commission shall adopt a formulary of pharmaceutical agents that can be prescribed by an optometrist in the practice of optometry without communication and collaboration with a licensed physician. The fomulary shall include all drugs listed in subparagraph (c) of this section. In developing the formulary, the Commission shall consider the scope of optometry as defined in G.S. 90-114.

(b) The Joint Formulary Commission shall review the formulary at least two times per calendar year and revise it as necessary.

(c) The Joint Formulary Commission shall, at a minimum, include the following pharmaceutical agents in the formulary authorized by subparagraph (a) of this section:

(1) all ocular topical pharmaceutical agents;

(2) all oral antihistamines;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

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

H527-ARV-002 Page 3 of __

(3) Schedule IV and Schedule V non-steroidal anti-inflammatory oral pharmaceutical agents;
(4) Schedule III, Schedule IV and Schedule V oral analgesics;
(5) oral tetracycline;
(6) oral penicillin;
(7) oral ampicillin;
(8) oral doxycycline;
(9) oral amoxicillin;
(10) oral erythromycin;
(11) oral triamethoprim;
(12) oral sulfamethoxazole;
(13) oral cephanlexin.'

Section 1.3. The Joint Formulary Commission shall adopt temporary rules to implement the provisions of G.S. 90-114.1 and G.S. 90-114.2 by October 1, 1997.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

**§8-53. Communications between physician and patient.**

No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, **and which information was necessary to enable him to prescribe for such patient as a physician,** or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge. (1885, c. 159; Rev., s. 1621; C.S., s. 1798; 1969, c. 914; 1977, c. 1118; 1983, c. 410, ss. 1, 2; c. 471.)

**§ 8-53.3. Communications between psychologist and client or patient.**

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to disclose any information which he or she may have acquired in the practice of psychology **and which information was necessary to enable him or her to practice psychology.** Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.
(1967, c. 910, s. 18; 1983, c. 410, ss. 3, 7; 1987, c. 323, s. 2; 1993, c. 375, s. 2, c. 553, s. 78.)

**§8-53.4. School counselor privilege.**

No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, **and which information was necessary to enable him to render counseling services;** provided, however, that this section shall not apply where the student in open court waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be the district court judge, and if the case is in superior court the judge shall be a superior court judge. (1971, c. 943; 1983, c. 410, ss. 4, 5.)

**§8-53.5. Communications between marital and family therapist and client(s).**

No person, duly authorized as a certified marital and family therapist, nor any of his employees or associates, shall be required to disclose any information which he may have acquired in rendering professional marital and family therapy services, **and which information was necessary to enable him to render professional marital and family therapy services.** Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in

superior court the judge shall be a superior court judge. (1979, c. 697, s. 2; 1983, c. 410, ss. 6, 7.)

**§8-53.7. Social worker privilege.**

No person engaged in delivery of private social work services, duly certified pursuant to Chapter 90B of the General Statutes shall be required to disclose any information which he or she may have acquired in rendering professional social services, **and which information was necessary to enable him or her to render professional social services:** provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation. (1983, c. 495, s. 2.)

**§ 8-53.8. Counselor privilege.**

No person, duly licensed pursuant to Chapter 90, Article 24, of the General Statutes, shall be required to disclose any information which he or she may have acquired in rendering professional counseling services, **and which information was necessary to enable him or her to render professional counseling services:** Provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation. (1983, c. 755, s. 2; 1993, c. 514, s. 2.)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H527-ARV-001

Page 1 of __

Date 5-15- ,1997

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator Rand

moves to amend the bill on page 3, line 14,
by inserting between the words "fees" and "arising" the words "of the Society and its members participating in the peer review process"; and

on page 3, line 20,
by inserting between the words "services," and "except" the words "and which information was necessary to enable the person to render professional optometric services,"; and

on page 3, lines 24 through 42,
by deleting the lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, May 15, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS) **527** Optometry Changes
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

J — May 15-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Rhett A. Brisson, O.D. | N.C. State Optometric Society Wilson, N.C. |
| Allan N Beaudy OD | PO Box 35 Newton NC |
| Ed Paul, O.D. | Wrightsville Bch, NC |
| Michael Goins, O.D | Wilm NC. |
| MARVIN SCHRUM, OD | CHARLOTTE, NC |
| CHARLES PRUDEN, OD | Wilson, N.C. |
| GARY VANDERPOOL | GREENVILLE, NC ECU |
| ANN JOBE | EAST CAROLINA UNIV |
| Sue Gardner | NCSOS |
| Dr Dan Robuson | Wallace |
| DAVID ANDERSON, O.D. | TARBORO, NCSOS |
| H. Mac Johnson | Rocky Mount NC |
| Jerry N. Ellington, Jr. OD | Henderson NC, NCSOS |
| W. M Pedcomb JR. OP | Warrenton NC |
| E. Glenn Likens, O.D. | WALLACE NC |
| William C Philbrick OD | Fayetteville NC |
| BJ Ciampa, O.D. | Fayetteville, NC, |
| Roslyn Savitt | Lobbyist |
| Deborah Ross | ACLU |
| DICK GURLEY | DICK GURLEY Assoc. Inc |
| Bill Alexander | NCPBA |

VISITOR REGISTRATION SHEET

J — 5-15-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Mary Ralston MD | Southeastern Eye Center, Greensboro |
| Ralph S. Pratt | CSC |
| James Burcaw | Bowman Gray School of Medicine |
| David Nash | Pharmacy Board |
| B Thacker | NCSDA |
| Marie Smith | NCSCPS |
| Alan Skipper | NCSCPS |
| Arlene Pulley | Optometry |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# MAY 20, 1997

The Senate Judiciary Committee met on Tuesday, May 20, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hensley to explain **House Bill 354** - AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES.

Tom Andrews, with the Administrative Office of the Courts, was recognized to speak on the bill.

Senator moved to send the bill to a subcommittee to work out several questions raised by the Committee. The motion carried by voice vote.

Representative Sutton was recognized to explain **House Bill 465** - 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.

Senator Hoyle moved to give the bill a favorable report. The motion carried by voice vote.

Representative Goodwin was recognized to explain **House Bill 402** - 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.

Senator Ballance moved to give the bill a favorable report. The motion carried by voice vote.

Representative Wilkins was recognized to explain **House Bill 523** - AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

Senator Soles moved to adopt a Proposed Committee Substitute for House Bill 523 for discussion. The motion carried by voice vote.

Eddie Caldwell, with the N. C. Sheriff's Association, was recognized to speak on the bill.

Senator Rand moved to send the bill to a subcommittee for further discussion. The motion carried by voice vote.

Senator Cooper announced that he would name subcommittees to look at House Bill 354 and House Bill 523.

There being no further business, the meeting adjourned at 11:00 a.m.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 20, 1997

| | | |
|---|---|---|
| HB 354 | Eliminate Certified Notice | Hensley |
| HB 448 | Governor's DWI Initiative | Hackney |
| HB 465 | Voluntary Dismissal/Notify Defendant | Sutton |
| HB 523 | Confiscated Gun Law Officer Use | Wilkins |
| HB 958 | Concealed Handgun Laws Amend. | Hightower |

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May 20, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 354 - ELIMINATE CERTIFIED NOTICE**
Representative 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. Service is complete three days after mailing. A copy of the entire statute governing forfeiture of bail is attached for your reference.

House Bill 354 is effective when it becomes law.

## § 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

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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.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# 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**

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May 20, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 465 - VOLUNTARY DISMISSAL/NOTIFY DEFENDANT**
Representative Sutton

Under current law, G.S. 15A-931 provides that, except for charges involving impaired driving, a prosecutor may dismiss any charges stated in a criminal pleading 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. ( G.S. 20-138.4 requires that a prosecutor enter detailed facts in the record of any case involving impaired driving explaining the reasons for entering a voluntary dismissal.)

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. Notice is made by personal delivery or by mail to the defendant's attorney of record or to the defendant if he is not represented by counsel. The prosecutor need not serve notice if the dismissal is 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# 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**
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May 20, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 402 - EXPUNGE INFRACTIONS** - Representative Smith.

House Bill 402 would permit a person age 19 or 20 who is charged with an infraction for underage purchase or possession of beer, wine, or liquor to have the infraction expunged if the charge is dismissed, or a finding of not guilty or not responsible is entered.

Under current law, a person 18 or under is guilty of a misdemeanor for purchasing or possessing alcoholic beverages. This same offense is only punished as an infraction for a person 19 or 20. Under G.S. 15A-145 a person under age 18 convicted of a misdemeanor or felony may have their conviction expunged for a first offense after having no additional convictions for a period of two years. Under G.S. 15A-146 any person charged with a misdemeanor or felony who is not convicted may have their arrest record expunged. Because the purchase or possession charge is an infraction for a person 19 or 20, not a misdemeanor, if not convicted that person has no right to have the charge expunged, even though the person age 18 or under charged with the same offense does.

This bill amends G.S. 15A-146(a) which allows for the expungement of charges of a felony or misdemeanor when not convicted for persons age 18 or over to also apply this provision to 19 and 20 year olds charged with an infraction in this limited alcohol law violation situation.

The bill becomes effective when it becomes law.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.**

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petiton shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and petitioner was not 18 years old at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law- enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the

Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

**§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.**

(a) If any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty 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.

(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging such records shall be taxed against the petitioner.

(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement.

**§ 18B-302. Sale to or purchase by underage persons.**

(a) Sale. -- It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase or Possession. -- It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages.

.....

(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 402
Committee Substitute Favorable 4/28/97

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.

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May 20, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 523 - CONFISCATED GUN/LAW OFFICER USE**
Representative Wilkins

House Bill 523 amends 14-269.1 to provide a judge two additional alternatives when ordering the disposition of weapons confiscated for certain offenses - including the use of a firearm in the commission of a felony, unlawful carrying of a concealed weapon, and possession of a handgun by a minor, or any other offense involving the use of a deadly weapon. The judge would be allowed to order the weapon turned over to a local law-enforcement agency in the county of trial 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.

The bill would restore provisions that were repealed effective May 1, 1994.

This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 523
Committee Substitute Favorable 4/23/97

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 523
Committee Substitute Favorable 4/23/97
Proposed Senate Committee Substitute H523-CSSA-003
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 county school 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
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

# REVISED REPORT

Tuesday, May 20, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS) **402** Expunge Infractions
Sequential Referral: None
Recommended Referral: None

H.B. **465** Voluntary Dismissal/Notify Defendant
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **676** Sex Offender Laws/Federal Compliance
Draft Number: PCS 1808
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

"J" Committee — 5-20-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Alan Miles | Barley & Dixon LLP |
| Philip Ree | DOJ |
| [illegible] | NCBA |
| Bill Alexander | NC PBA |
| Jim BAENARD | GRNC |
| Shannon Brasime | DSJ |
| Rob Schofield | NCJCDC |
| Nancy Bradley | NCCBD |
| Jane P. Gray | DOJ |
| Baker & Hostetler | GNA |
| Jerry Garcia | NY |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# MAY 22, 1997

The Senate Judiciary Committee met on Thursday, May 22, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hightower to explain **House Bill 958** - AN ACT TO THE CONCEALED HANDGUN LAWS.

Bill Alexander, with the Police Benevolent Association, was recognized to answer questions from the Committee.

Because of concerns raised in the discussion, Senator Cooper announced that the bill would be brought back to the Committee on Tuesday, May 27th.

Representative Hackney was recognized to explain **House Bill 448** - AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

Senator Odom moved to adopt a Proposed Committee Substitute (#004) for House Bill 448 for discussion. The motion carried by voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the Proposed Committee Substitute.

Senator Odom moved to amend the Proposed Committee Substitute on Page 14, Lines 34 and 35. After discussion the amendment was withdrawn.

Senator Odom moved to amend the Proposed Committee Substitute on Page 22, Lines 31 and 32. (See amendment #003.) The motion failed by a show-of-hands vote of 10-8.

Senator Lucas moved to amend the Proposed Committee Substitute on Page 26, Lines 5-11. (See amendment #007.) The motion carried by a show-of-hands vote of 9-7.

Joe Stewart, with the Department of Crime Control and Public Safety, was recognized to answer questions from the Committee.

Senator Shaw moved to amend the Proposed Committee Substitute on Page 26, Lines 13-21. (See amendment #001.) The motion failed by a show-of-hands vote of 21-13.

John Adler, with the Sentencing Commission, was recognized to answer questions from the Committee.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

There being no further business, the meeting adjourned at 11:15 a.m.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 22, 1997

| | | |
|---|---|---|
| HB 448 | Governor's DWI Initiative | Hackney |
| HB 958 | Concealed Handgun Laws Amend. | Hightower |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 958
Committee Substitute Favorable 4/30/97

Short Title: Concealed Handgun Laws Amend. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONCEALED HANDGUN LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269(b) reads as rewritten:

"(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 and law enforcement 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.~~ beverages; and

c. The location into which the officer carries the concealed handgun is not specifically prohibited by State or federal law."

Section 2. G.S. 14-269.2(g) reads as rewritten:

"(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) ~~Armed forces personnel, officers and soldiers of the militia and national guard, law enforcement personnel, fire fighters,~~ Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

Section 3. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

~~(1) Officers and enlisted personnel of the armed forces when in the discharge of their official duties as such and acting under orders requiring them to carry arms and weapons,~~

(1a) A person exempted by the provisions of G.S. 14-269(b),

~~(2) Civil officers of the United States while in the discharge of their official duties,~~

~~(3) Officers and soldiers of the militia and the State guard when on duty or called into service,~~

~~(4) Officers or employees of the State, or any county, city, or town charged with the execution of the laws of the State, when acting in the discharge of their official duties if authorized by law to carry weapons,~~

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 4. G.S. 14-277.2(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person exempted by the provisions of G.S. 14-269(b) or to persons authorized by State or federal law to carry dangerous weapons in the performance of their duties or to any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place."

Section 5. G.S. 14-415.22 reads as rewritten:

"**§ 14-415.22. Construction of Article.**

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun ~~permit.~~ permit or to make the person subject to the restrictions regarding concealed handguns under G.S. 14-415.11(c). A person lawfully carrying a concealed handgun pursuant to the provisions of G.S. 14-269(b) may carry a concealed handgun into any location in the State unless specifically prohibited by State or federal law."

Section 6. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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May 13, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan and Brenda Carter, Committee Co-Counsel and Susan Hayes, House Judiciary II Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 448 - GOVERNOR'S DWI INITIATIVE/AB** - Representative Hackney

The Senate Proposed Committee Substitute for House Bill would strengthen the law which allows seizure of vehicles when used in driving while impaired and while the license has been revoked for an impaired driving offense, increases the penalty for driving while impaired, increases the mandatory administrative license revocation period for driving while impaired, strengthens the punishment for habitual impaired driving, and makes other changes related to the enforcement of the DWI laws.

**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 for driving while impaired 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 the greater weight of the evidence that he or she is an innocent party, in which case the judge may order the vehicle released to the registered owner under specified conditions.

*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 the innocent parties' express or implied permission.

*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 a judicial sale with notice to the registered owner and lienholders 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 the officer 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. Also includes provisions for returning vehicle if no probable cause is found or the defendant is not found guilty.

**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 that requires the defendant to serve a minimum of 7 days. (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 other unresolved pending DWI offenses or intervening DWI convictions; 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 7$^{th}$ and 9$^{th}$ 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 which shall not be suspended.

**Part VIII - Effective Date**

The bill is effective December 1, 1997 and applies to offenses committed on or after that date.

*Prepared in part from summary in the IOG's Daily Bulletin*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H448-CSRU-004
**PROPOSED SENATE COMMITTEE SUBSTITUTE**
HOUSE BILL 448
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/28/97
**THIS IS A DRAFT 21-MAY-97 21:03:49**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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) Acknowledgement. -- A written document acknowledging that:

a. The 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;

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 (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 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 subsection (i) 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 non-defendant 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 district court 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 set forth in 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 subsection (f) of 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, and 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 a written acknowledgment as described in G.S. 20-28.2(f); and

(5) A check of the records of the Division indicates that the requesting vehicle owner has not previously executed a written 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 apply to a district court judge 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 a written 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(g).

(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 titled and registered 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.

(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(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~~ 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 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. 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.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ARU-003



Date _____, 1997

Comm. Sub. [YES]
Amends Title []
H448-CSRU-004

Senator _____

moves to amend the bill on page 22, line ~~12~~ 31 and ~~13~~ 32, by inserting between the lines the following sections:

"Section 3.9. G.S. 20-16.2 is amended by adding a new subsection to read:

'(j) Notwithstanding any other provision of this section, the minimum period of revocation of a person's driving privilege under this section shall be 10 days and not 30 days if the person has not previously been convicted of an impaired drivers license revocation offense as defined in G.S. 20-28.2(a) and the person's chemical analysis test reveals an alcohol concentration of ~~less than~~ 0.10 or less.'

Section 3.10. G.S. 20-16.5 is amended by adding a new subsection to read:

'(p) Notwithstanding any other provision of this section, for a person who has not previously been convicted of an impaired drivers license revocation offense as defined in G.S. 20-28.2(a) and the person's chemical analysis test reveals an alcohol concentration of ~~less than~~ 0.10 or less, the 30-day period of revocation under this section shall only be for a period of 10 days and the 45-day period of revocation under this section shall only be for a period of 30 days.'".

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. 007

H. B. No. 448 DATE 5-22-97

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

COMMITTEE SUBSTITUTE ✓

Rep. )
) Lucas
Sen. )

moves to amend the bill on page 26, line 35 - 11

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety

SIGNED Joanne H. Lucas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ARU-001



Date_____,1997

Comm. Sub. [YES] H448-CSRU-004
Amends Title []

Senator Shaw of Guilford

moves to amend the bill on page 26, lines 13 through 21, by rewriting the lines to read:

"Section 7.1. G.S. 15A-1340.10 reads as rewritten:

'**§ 15A-1340.10. Applicability of structured sentencing.**

This Article applies to criminal offenses in North Carolina, other than impaired driving under ~~G.S. 20-138.1~~ G.S. 20-138.1, habitual impaired driving under G.S. 20-138.5, and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes.'

Section 7.2. G.S. 20-138.5(b) reads as rewritten:

' (b) A person convicted of violating this section shall be punished as a Class G ~~felon.~~ felon as follows:

(1) For a first conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 60 months nor more than 84 months and may impose a fine;

(2) For a second conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 120 months nor more than 180 months and may impose a fine;

(3) For a third conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than life.

The court shall impose a single term of imprisonment that shall be both the minimum and maximum sentence, and the court may not suspend the sentence and may not place the person sentenced on probation. The sentence shall not be reduced by any credit for good behavior,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ARU-001 Page 2 of __

gain time, earned time, and the like, except for credit for time served under G.S. 15-196.1. A person serving the sentence shall not be eligible for parole or post-release supervision. ~~Sentences~~ A sentence imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.'

Section 7.3. The provisions of this Part are effective on October 1, 1997, and apply to offenses committed on or after that date.

PART VIII. EFFECTIVE DATES.

Section 8. Except as otherwise provided, this act becomes effective December 1, 1997,"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ARU-006



Date_____,1997

Comm. Sub. [YES]
Amends Title []
H448-CSRU-004

Senator _____

moves to amend the bill on page 14, lines 34 and 35,
by rewriting the lines to read:
"treatment. The judge may impose restrictions on."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

TABLE 2
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| AL | -- | -- | -- | -- | 48 CH | 60 D | -- | 20 D | -- | S-90 D | R-1 Y | R-3 Y |
| AK | 250 | 500 | 1,000 | 72 CH | 20 D | 120 D[42] | -- | -- | -- | R-30 D | R-1 R | R-10 Y |
| AZ | 250 | 500 | -- | -- | 30 CD[13] | 6 M | -- | -- | -- | S-90 D[20] | R-1 Y[44] | R-3 Y |
| AR | 150 | 400 | 900 | -- | 7 D | 90 D | -- | -- | -- | --[46] | --[46] | --[46] |
| CA | 390 | 375 | 390 | -- | 48 H[1,2] | 30 D[1,2] | -- | 10 D[2] | --[2] | -- | S-30 D | R-3 Y |
| CO[X] | -- | -- | -- | 5 D[31] | 7 D | 7 D | (48 H)[18] | (60 H)[18] | (60 H)[18] | -- | R-1 Y[47] | R-2 Y[47] |
| CT[X] | -- | -- | -- | 48 CH | 10 D | 120 D | 100 H | -- | -- | --[42] | --[42] | --[42] |
| DE | -- | -- | -- | -- | 60 D[34] | 3 CM[34] | -- | -- | -- | --[35] | R-6 M[35] | R-6 M |
| DC[X] | -- | -- | -- | -- | -- | -- | -- | -- | -- | R-6 M | R-1 Y | R-2 Y |
| FL | -- | -- | -- | -- | 10 D[10] | 30 D[10] | (50 H)[18] | -- | -- | -- | R-12 M | R-24 M |
| GA | 300 | 600 | 1,000 | -- | 48 H | 10 D | 40 H | 80 H | 20 D | -- | S-120 D | R-5 Y |
| HI | 150[5] | 500 | 500 | 48 H[3] | 48 CH | 10 D[10,40] | 72 H[3] | 100 H[40] | -- | S-30 D | S-1 Y | R-1 Y |
| ID | -- | -- | -- | -- | 10 D[13] | 30 D | -- | -- | -- | S-30 D | S-1 Y | S-1 Y |
| IL | -- | -- | -- | -- | 48 CH | 48 CH | -- | 100 H | 30 D | -- | -- | -- |
| IN | -- | -- | -- | -- | 5 D[4] | 5 D[4] | -- | 10 D | 10 D | S-30 D | S-1 Y | S-1 Y |
| IA | 500[6] | 750 | 750 | -- | 7 D[7] | 30 D | -- | -- | -- | R-30 dys[30] | R-1 Y | R-1 Y |
| KS | -- | 500 | -- | 48 CH | 48 CH[36] | 48 CH[36] | 100 H | -- | -- | S-30 D | S-1 Y | S-1 Y |
| KY | 200[3] | -- | -- | 48 H[3] | 7 D | 30 D | 48 H[3] | -- | -- | S-30 D | R-12 M | R-24 M |
| LA | -- | -- | -- | 2 D[23] | 15 D[23] | 6 M[23] | 4 D | 30 D | -- | -- | --[41] | --[41] |



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Digest of State Alcohol-Highway Safety
January 1, 1996
15th Edition

**TABLE 2 (continued)**
**ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION**

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| ME | 400 | 600 | 1,000 | 48 H[17] | 7 D | 30 D | -- | -- | -- | S-60 D[24] | S-18 M[24] | S-4 Y[24] |
| MD[Y] | -- | -- | -- | -- | 48 CH | 48 CH | -- | 80 H | 80 H | -- | -- | -- |
| MA | -- | -- | -- | -- | 30 D[9,25] | 150 D[9,25] | -- | -- | -- | S-45 D | R-6 M | R-2 Y |
| MI[X] | 100[32] | 200[32] | 500[32] | -- | 48 CH | 1 Y | -- | -- | -- | -- | R-1 Y | S-5 Y |
| MN | 140 | 600 | 600 | -- | 48 CH[39] | 48 CH[39] | -- | 80 H[26] | 80 H[26] | R-15 D | R-15 D | R-15 D |
| MS | 200 | 400 | 500 | -- | -- | -- | -- | -- | -- | S-30 D | S-1 Y | S-3 Y |
| MO | -- | -- | -- | -- | 48 CH | 48 CH | -- | 10 D | 10 D | S-30 D[21] | R-2 Y[21] | R-3 Y[21] |
| MT | -- | -- | -- | 24 CH[9] | 3 D[9,10] | 10 D[9,10] | -- | -- | -- | -- | R-3 M[29] | R-3 M[29] |
| NE | -- | -- | -- | -- | 48 H[38] | 7 D[38] | -- | -- | -- | R-30 D[38] | R-6 M[38] | R-1 Y[38] |
| NV | 200 | 500 | 2,000 | 2 D[11] | 10 D[12] | 1 Y[13] | 48 H | -- | -- | R-45 D | R-1 Y | R-1.5 Y |
| NH | 300 | 500 | 500 | -- | 10 D[14] | 10 D[14] | -- | -- | -- | R-90 D | R-3 Y | R-3 Y |
| NJ | 250 | 500 | 1,000 | --[15] | 48 CH | 90 D[27] | -- | (30 D)[18] | (90 D)[18] | R-6 M[22] | R-2 Y[22] | R-10 Y[22] |
| NM | -- | -- | -- | -- | 48 CH | 48 CH | -- | -- | -- | -- | R-1 Y | R-5 Y |
| NY[Z] | 500 | 1,000 | 1,000 | -- | -- | -- | -- | -- | -- | -- | R-1 Y | R-1 Y |
| NC | -- | -- | -- | -- | 7 D | 7 D | -- | -- | -- | -- | R-2 Y | R-3 Y |
| ND | 250 | 500 | 1,000 | -- | 4 D[4] | 60 D[4] | -- | 10 D | -- | S-30 D | S-365 D | S-2 Y |
| OH | 200 | 300 | 500 | -- | 5 CD[45] | 15 CD[45] | -- | -- | -- | S-15 D | S-30 D | S-180 D |
| OK[X] | -- | -- | -- | -- | --[28] | --[28] | -- | --[28] | --[28] | -- | -- | -- |
| OR | 565 | 565 | 565 | 48 CH | 48 CH | 48 CH | 80 H | 80 H | 80 H | -- | S-90 D | S-1 Y |

**TABLE 2 (continued)**
**ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION**

| STATE | Mandatory Fine ($) -- DWI Conviction | | | Mandatory Imprisonment -- DWI Conviction | | | Community Service in Lieu of Mandatory Jail | | | Mandatory Licensing Action -- DWI Conviction | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd | 1st | 2nd | 3rd |
| PA | 300[37] | 300[37] | 300[37] | 48 CH[50] | 30 D[50] | 90 D[50] | -- | -- | -- | S-1 M[5] | S-12 M | S-12 M[5] |
| PR | -- | -- | -- | -- | 24 CH | 30 D | -- | 10 D | -- | -- | -- | -- |
| RI | 100 | 400 | 400 | -- | 10 D[4] | 6 M[4] | -- | -- | -- | S-3 M | S-1 Y | S-2 Y |
| SC | 200 | 1,000 | 3,500 | 48 H[43] | 48 H[43] | 60 D[43] | 48 H[43] | 10 D[43] | -- | -- | S-1 Y | S-2 Y |
| SD | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | R-1 Y[41] | R-1 Y |
| TN | 350 | 600 | 1,100 | 48 H | 45 D | 120 D | -- | -- | -- | -- | R-2 Y | R-3 Y |
| TX | -- | -- | -- | -- | 72 H[16] | 10 D[16] | -- | -- | -- | -- | -- | -- |
| UT | 700 | 800 | 1,000[51] | 48 CH | 240 CH | 720 D | 24 H | 80 H | 240 H | S-90 D | R-1 Y | R-1 Y |
| VT | -- | -- | -- | -- | 48 CH | -- | -- | -- | -- | S-90 D | S-18 M | R-2 Y |
| VA | -- | -- | -- | -- | 48 H | 30 D | -- | -- | -- | -- | R-2 Y[24] | R-3 Y |
| WA | 350[4] | 500[4] | 1,000[4] | 24 CH[4] | 30 D[4] | 90 D[4] | -- | -- | -- | S-30 D[4] | R-1 Y[4] | R-2 Y[4] |
| WV | 100[19] | 1,000[19] | 3,000[19] | 24 H[19] | 6 M[19] | 1 Y[19] | -- | -- | -- | R-30 D[40] | R-1 Y[40] | R-1 Y[40] |
| WI | 150 | 300 | 600 | -- | 5 D | 30 D | -- | -- | -- | -- | R-60 D | R-90 D |
| WY | -- | -- | -- | -- | 7 D | 7 D | -- | -- | -- | -- | S-1 Y | R-3 Y |
| TOTALS | 27 | 27 | 25 | 17 | 47 | 46 | 10 | 15 | 8 | S-18<br>R-9 | S-16<br>R-28 | S-12<br>R-32 |

[X]Mandatory sanctions for the offenses of driving while under the influence and illegal per se.
[Y]Mandatory sanctions for the offense of driving while intoxicated.
[Z]Mandatory sanctions for the offenses of driving while intoxicated and illegal per se.

C=Consecutive, H= Hour(s), D=Day(s), M=Month(s), Y=Years(s), S=Suspension, R=Revocation
Important. A blank space in this table does not mean that a State does not have a sanction. It only means that a State does not have a mandatory sanction.

TABLE 2 (continued)
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

[1]The 48 hours (2nd off) and 30 days (3rd off) are not necessarily served consecutively. The sanctions listed are for non-injury offenses.
[2]48 consecutive hours of imprisonment or 10 days of community service became mandatory when the Dept. of Motor Vehicles certified that an application for 23 USC §408 grant funds has been submitted to the U.S. Dept. of Transportation.
[3]The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.
[4]Where the offender's alcohol concentration was <0.15.
[5]For a 1st off, 1 mo mand susp if defendant is accepted into the Accelerated Rehabilitation Disposition program. For a 3rd off, revocation could be 5 yrs under the habitual offender law.
[6]Not more than 200 hours of community service in lieu of the fine.
[7]This sentence may not be suspended; however, the statute is silent as to probation.
[8]This sanction may be served in a residential treatment facility.
[9]This sanction only applies to driving while under the influence offenses.
[10]Must serve 48 consecutive hours.
[11]One day imprisonment or 24 hrs of community service if rehabilitation is taken.
[12]48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the jail term is reduced to 1 dy or, as an alternative, the offender may perform 24 hrs of community service.
[13]48 con hrs if the defendant is eligible for the work release program.
[14]Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center.
[15]Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.
[16]As a part of community supervision.
[17]Provided the defendant either (1) had an alcohol concentration of 0.15 or more, (2) was driving 30 MPH over the speed and had an alcohol concentration of 0.08 or more, (3) was eluding a police officer and had an alcohol concentration of 0.08 or more, (4) refused to submit to a chemical test or (5) was driving a vehicle with a passenger under 16 years old.
[18]Mandatory community service regardless of whether there is a mandatory imprisonment sanction.
[19]Applies to DWI offs that are not related to injury or death.
[20]May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
[21]Applies only to driving while intoxicated offenses.
[22]The law states that the right to operate a motor vehicle is "forfeited".
[23]Home incarceration is possible.
[24]I. This susp action is not mand in all situations. A temporary restricted license may be issued only for the purpose of attending either an alcohol education or treatment program. II. If a 1st offender participates in an alcohol or drug treatment program, the mand susp period may be less than 60 dys. III. If an ignition interlock is used, the mand susp periods are respectively for a 2nd off 1 yr and for a 3rd off 2 yrs.
[25]Work release is available for this period of time.
[26]This alternative does not apply to offenders who have had either 5 prior drunk driving offense convictions within 10 years or 7 prior convictions within 15 years.
[27]Not more than 90 dys as an alternative to imprisonment.
[28]If there is no imprisonment sanction, the defendant must serve either 48 con. hrs. of inpatient rehabilitation/treatment or 10 dys of community service.
[29]This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
[30]90 dys mandatory if the defendant has refused to submit to a chemical test under the implied consent law.
[31]Applies only to a 1st illegal per se conviction.
[32]Possible
[33]Followed by a period of "house arrest" with electronic monitoring.
[34]"House arrest" may be possible in lieu of a jail sentence.
[35]3 months with participation in the ignition interlock program.
[36]Followed by work release for 3 dys for a 2nd off and 88 dys for a 3rd off.
[37]Plus the following mandatory surcharges: 1st off-$50; 2nd off-$100; and, 3rd off-$200.
[38]The mandatory sanctions given are based upon a person receiving probation.
[39]30 dys imprisonment with 48 consecutive hours.
[40]Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.
[41]There is no mandatory licensing action if the offender is placed on probation and is allowed to participate in the ignition interlock program.
[42]License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".
[43]Home detention may be used in lieu of this sanction.
[44]An amendment to the law in 1993 may have eliminated this mandatory revocation.
[45]If treatment is authorized by the court, confinement is only for 3 days in a medical facility.
[46]Licensing sanctions are via the administrative per se law.
[47]The mandatory revocation periods for 2nd and 3rd offenses may be reduced to respectively 3 mos and 6 mos if the offender participates in the ignition interlock program.
[48]If 3rd off was w/n 5 yrs.
[49]The sanctions given apply only to driving either (1) while under the influence of intoxicating liquor or (2) with an alcohol concentration ≥0.08. For driving while under the influence of a controlled substance, a 2nd offender, in lieu of imprisonment, must perform at least 80 hrs of community service; a 3rd offender only has to serve 48 con hrs of confinement.
[50]House arrest or in-patient rehabilitation may be used as alternatives to this imprisonment sentence.
[51]For a 3rd offense after 7/1/96, $2,000 or $1,500 if the court suspends sentence.

# IMPOUNDMENT, REGISTRATION WITHDRAWAL OR CONFISCATION OF A VEHICLE FOR A DWI OFFENSE

| IMPOUNDMENT[1] | REGISTRATION WITHDRAWN[1] | | CONFISCATION | |
|---|---|---|---|---|
| California | Arizona | North Dakota | Alaska[5] | North Dakota[8] |
| Florida | Indiana[6] | Ohio[19] | Arizona[8] | Ohio[12] |
| Illinois[2] | Kansas[20] | Oregon[5] | Arkansas[11] | Pennsylvania[15] |
| Iowa[9] | Maine[5] | Rhode Island | California[10] | Rhode Island[16] |
| Missouri[3&21] | Minnesota | South Dakota | Georgia[12] | South Carolina[7] |
| Montana[4] | New | Virginia | Maine[9] | Tennessee[9] |
| Ohio[18] | Hampshire[13] | Wyoming[5] | Minnesota[16] | Texas[8] |
| Oregon[5] | New York | | Missouri[21] | Washington[13] |
| Wisconsin[17] | | | Montana[16] | Wisconsin[17] |
| | | | New York[14] | |
| TOTAL=9 | TOTAL=15 | | TOTAL=19 | |

[1]The column titled "Impoundment" also includes States that immobilize vehicles. The column titled "Vehicle Registration Withdrawn" also includes States that impound license plates.
[2]Limited impoundment following a DWI arrest.
[3]Vehicle impoundment for persons under 18 who are convicted of a DWI offense.
[4]Vehicle impoundment only if the driver was under 18 years old.
[5]For a 2d offense w/n 6 years.
[6]For a subsequent DWI offense conviction, registration plates suspended.
[7]For a 4th DWI offense conviction within 10 years.
[8]For three (3) or more DWI offense convictions.
[9]For a 2nd or subsequent DWI offense conviction.
[10]Vehicle is confiscated if there are 2 previous DWI offense convictions within 7 years.
[11]For a 4th DWI offense conviction within 3 years.
[12]For a 4th DWI offense conviction within 5 years.
[13]Applies only for 2nd or subsequent DWI offense convictions.
[14]Possible for a 2nd or subsequent DWI offense convictions.
[15]Applies via "common law".
[16]For a 3rd or subsequent DWI offense conviction within 5 years.
[17]For a 3rd or subsequent DWI offense conviction within ten (10) years.
[18]For a 2nd offense within 5 years.
[19]Registration withdrawal applies to a 2nd offense and 3rd offenses within 5 years. For a 3rd offense within 5 years, the vehicle will also be "immobilized".
[20]License plate revocation for a 4th or subsequent offense.
[21]State law provides that cities may enact forfeiture ordinances.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Monday, May 26, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **448** Governor's DWI Initiative/AB

| | |
|---|---|
| Draft Number: | PCS 1381 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

T - Committee — 5/22/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Shannon Bullock | Governor's Highway Safety |
| Bob Phillips | Lt. Gov's office |
| Margaret Jackson | Lt. Gov's Office |
| George Read | NC Council of Churches |
| Lori Everhart | NC Citizen Action |
| Jeannie Ford | Senator Kennaird's office |
| Eric Zogry | NC Sentencing Commission |
| Ruth Sapphire | Ruth Sapphire |
| Grover Nicholson | NC DEHNR |
| Sandi Walden | Burke County Republican Party Chairman |
| Natalie Hasgins | Charlotte Chamber of Commerce |
| Lucia Segel | NC Medical Society |
| Jim Jo Bain | Smith Anderson |
| Charles Webb MD | Dicon of DHR |
| Alan Pruitt | |
| Steve Schmidt | NC-NCDC |
| Bill Schaller | MADD |
| Robin Brookins | Governor's Institute on Alcohol & Substance |
| Harriett Southerland | DOA / VA 10 |
| Butch Gunnells | NC Soft Drink Assoc. |
| Jim Barnard | GRNC |
| A.B. Swindell IV | BFI |
| Steve Keene | NC Med. Soc. |

VISITOR REGISTRATION SHEET

J - Committee — 5/22/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Bill Alexander | NCPBA |
| Robin O'Brien | PFFNC |
| Sandy Sands | CUCSR |
| R. Rogers | DENR |
| John (CCHRA) | News & Record |
| Zee Lamb | Lt. Gov |
| Andy Romeo | N.C. Lim |
| Prof Bailey | Bailey & Dixon |
| Peggy Dail | VRTV |
| Sherry Dail | Victim |
| Sandra C Cooper | Durham County MADD |
| Otis Carter | Carter & Assoc. |
| Mike Cermak | NCCASA |
| Alan Miles | Bailey & Dixon LLP |
| D Rees | |
| Chris Scott | NC AFL-CIO |
| John Madler | Sentencing Commission |
| Sally Cameron | NC Psychological |
| Ben Holmes | CCNC/Sierra Club |
| Joe Dunn | CCNC/Sierra Club |
| [illegible] | CSC |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
| --- | --- |
| John Patterson | Laurence Bailey & Co. |

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**MAY 27, 1997**

The Senate Judiciary Committee met on Tuesday, May 27, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Baddour to explain **House Bill 907** - AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN FAMILY ISSUES.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 907 for discussion. The motion carried by voice vote.

Peter Powell, with the Administrative Office of the Court, was recognized to speak on the bill.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Cansler was recognized to explain **House Bill 477** - AN ACT TO AUTHORIZE THE STATE BOARD OF CERTIFIED PUBLIC ACCOUNT EXAMINERS TO ADMINISTER COMPUTER-BASED EXAMINATIONS AND TO KEEP CERTAIN RECORDS CONFIDENTIAL.

Senator Rucho moved to give the bill a favorable report. The motion carried by voice vote.

Representative Bonner was recognized to explain **House Bill 615** - AN ACT TO CHANGE THE METHOD OF APPOINTING THE PUBLIC DEFENDER IN DISTRICT 16B.

Senator Gulley moved to give the bill a favorable report. The motion carried by voice vote.

Representative McMahan was recognized to explain **House Bill 597** - AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

After brief discussion by the Committee, Senator Cooper announced that the bill would be heard again at the next meeting.

There being no further business, the meeting adjourned at 11:00 a.m.

Senator Roy Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 27, 1997

| | | |
|---|---|---|
| HB 477 | CPA Exam and Records | Cansler |
| HB 597 | Municipal Lease/Venture | McMahan |
| HB 615 | Public Defender/District 16B | Bonner |
| HB 853 | Amend Prof. Corp. Act | Nye |
| HB 907 | Mediated Settlement/Family Issues | Baddour |
| HB 958 | Concealed Handgun Laws Amend. | Hightower |

**North Carolina General Assembly**
**Legislative Services Office**

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May 27, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 907 - MEDIATED SETTLEMENT/FAMILY ISSUES**
Representative Baddour, Hackney

House Bill 907 establishes a pilot program of mediated settlement conferences in district court actions involving equitable distribution, alimony and support. The pilot program may be established in any judicial district if the Director of the AOC and the chief district court judge of a district determine that use of the program is appropriate. The statutory provisions for the pilot program in district court are substantially similar to the current G.S. 7A-38.1, which provides for mediated settlement conferences in superior court civil actions.

Mediation is an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute. The mediator is a neutral person who acts to encourage and facilitate a resolution of the pending civil action. A mediator does not make an award or render a judgment as to the merits of the action.

In participating districts, the chief district court judge may order a mediated settlement conference for any action involving issues of equitable distribution, alimony, or child or spousal support. While the parties to the action, their attorneys and other parties with authority to settle the parties' claims are required to attend the mediated settlement conference, neither is required to make a settlement offer or demand which it deems contrary to its best interest. Any person who is required to attend and fails to do so is subject to an appropriate monetary sanction, including the payment of attorneys' fees, mediator fees and expenses incurred in attending the conference. An order imposing sanctions is reviewable upon appeal.

The parties to the district court action in which a mediated settlement conference is to be held have a right to designate a mediator. If the parties fail to designate a mediator within the time established by rules of the Supreme Court, a mediator is appointed by the chief district court judge.

Costs of mediated settlement conferences will be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees are to be paid in equal shares by the parties. Rules adopted by the Supreme Court are to set out a method whereby parties unable to pay the costs of settlement procedures are afforded an opportunity to participate without cost.

The Supreme Court is authorized to adopt standards for the certification and conduct of mediators and other neutrals who participate in the district court mediated settlement conference program established in the bill.

The AOC is authorized to charge a fee not to exceed $200 to applicants for certification and annual renewal of certification for mediators and mediator training programs operation. The fees may be used to establish and maintain the operations of the Dispute Resolution Commission and its staff. The AOC is authorized to solicit funds from private sources to design, establish, conduct, and evaluate the pilot program. The AOC is to evaluate the pilot program and report its findings and recommendations to the 1999 General Assembly.

The bill is effective when it becomes law. The pilot program becomes effective January 1, 1998 and expires September 1, 1999.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H907-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
H907
THIS IS A DRAFT 27-MAY-97 09:31:48
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Mediated Settlement/Family Issues. (Public)

Sponsors:

Referred to:

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 planning and design phase of the program shall include representatives from the Conference of Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the Court Ordered Arbitration Subcommittee of the Supreme Court's Dispute Resolution Committee, the North Carolina Mediation Network, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Association of Trial Court Administrators, the Family Law Section of the North Carolina Bar Association, and the Dispute Resolution Section of the North Carolina Bar Association.

(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 to an indigent party and without expenditure of State funds.

(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 and accept funds from private sources to design a pilot program and to develop an implementation and evaluation program, together with a cost and proposed funding analysis of the programs authorized under this Act, and shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by May 1, 1998.

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, May 28, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **907** Mediated Settlement/Family Issues

| | |
|---|---|
| Draft Number: | PCS 1385 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

**North Carolina General Assembly**
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May 27, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, Co-Counsel to the House Judiciary II Committee

**RE:** **HOUSE BILL 477 - CPA EXAM AND RECORDS -** Representative Cansler.

House Bill 477 would amend the Certified Public Accountant licensing statute by permitting the Board of CPA examiners to administer computer-based exams and to clarify which portions of a CPA's licensing file is public record.

Section 1 of the bill 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

**§ 84-24. Admission to practice.**

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Board of Law Examiners, subject to the approval of the Council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

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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**

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May 27, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Steve Rose, Co-Counsel for the House Judiciary I Committee

**RE:** **HOUSE BILL 615 - METHOD OF APPOINTING PUBLIC DEFENDER IN DISTRICT 16B** - Representative Bonner.

House Bill 615 changes the method for the selection of the Public Defender for District 16B for the appointing authority to be the Senior Resident Superior Court Judge instead of the other Resident Superior Court Judge.

The bill amends G.S. 7A-466(a) to change the method by which the Public Defender for Defender District 16B is appointed. Under present law, the Public Defender for District 16B is appointed from a list of not less than three names nominated by the attorneys in that defender district. The person making the appointment from the list is the Resident Superior Court Judge of Superior Court District 16B other than the Senior Resident Superior Court Judge.

The amendment would change the appointing officer to the Senior Resident Superior Court Judge of Superior Court District 16B.

The act is effective when it becomes law.

H615-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 615

Short Title: Public Defender/District 16B. (Public)

Sponsors: Representatives Bonner; Yongue and Sutton.

Referred to: Judiciary I.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE METHOD OF APPOINTING THE PUBLIC DEFENDER IN DISTRICT 16B.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-466(e) reads as rewritten:

"(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of Superior Court District ~~16B other than the senior resident superior court judge.~~ 16B."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 597
Committee Substitute Favorable 4/28/97

Short Title: Municipal Hospital Lease/Venture. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

"**§ 131E-6. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'City,' as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(4) 'Hospital facility' means any ~~type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.~~ one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(4.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as

utilities, parking lots, and garages, but excluding other improvements to land described in subsection (4) of this section and G.S. 131E-16(15).

(5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.

(6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual."

Section 2. G.S. 131E-13 reads as rewritten:

**"§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.**

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical- surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.

(2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.

(3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

(4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

(5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.~~

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of

the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

(1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.

(2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.

(3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.

(4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.

(5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.

(6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.

(7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.

(8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain hospital facilities as required by subsection (a) of this section or as required by G.S. 131E-23(c).

(f) A municipality, public hospital, or hospital authority may permit or consent to the pledge of hospital land or leasehold estates to facilitate the development, construction, and operation of medical office buildings and other health care or hospital facilities. A municipality, public hospital, or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this Chapter."

Section 3. G.S. 131E-16 reads as rewritten:

"**§ 131E-16. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Board of county commissioners' means the legislative body charged with governing the county.

(2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.

(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(15.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in G.S. 131E-6(4) and subsection (15) of this section.

(16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) 'State' means the State of North Carolina."

Section 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, May 27, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **477** CPA Exam and Records/AB
Sequential Referral: None
Recommended Referral: None

H.B. **615** Public Defender/District 16B
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

Judiciary Comm. — 5-27-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Bill Alexander | NCPBA |
| BILL SCOGGIN | NCBA |
| Jim BARNARD | GRNC |
| Jim M Killian | Moore-Van Allen |
| Jeanne Ford | Senator Kennaird's office |
| [illegible] | |
| David Simmons | Zeb Alley, PA |
| Rob Schofield | NCJCDC |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# MAY 29, 1997

The Senate Judiciary Committee met on Thursday, May 29, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hightower to continue the discussion of **House Bill 958** - AN ACT TO AMEND THE CONCEALED HANDGUN LAWS.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 958. The motion carried by voice vote.

Senator Odom was recognized to explain the Proposed Committee Substitute.

Senator Rucho moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Watson was recognized to explain **House Bill 1008** - AN ACT REGARDING THE EDUCATIONAL REQUIREMENTS FOR CHIROPRACTIC LICENSURE AND TO AUTHORIZE THE BOARD TO LICENSE PERSONS WHO HAVE PASSED THE NATIONAL CHIROPRACTIC EXAMINATION.

Vance Kinlaw, Attorney for the Board of Chiropractic Examiners, was recognized to speak on the bill.

Senator Odom moved to amend the bill on Page 2, Lines 17-20 and Page 2, Line 32. (See attached amendment.) The motion carried by voice vote.

Senator Ballance moved to amend the bill on Page 2, Line 28 by changing the word "may" to "shall". After discussion, Senator Ballance withdrew the motion.

Senator Lucas moved to give the bill a favorable report as amended and to roll it into a Committee Substitute. The motion carried by voice vote.

Representative Braswell was recognized to explain **House Bill 1091** - AN ACT TO ALLOW CERTAIN CRIMINAL RECORD CHECKS TO BE CONDUCTED BY PRIVATE BUSINESS.

Jane Gray, with the Attorney General's office, was recognized to speak on the bill.

After discussion by the Committee, Senator Cooper recommended that the bill be held.

Representative Capps was recognized to explain **House Bill 1124** - AN ACT PROVIDING THAT THE DEPARTMENT OF JUSTICE MAY PERFORM CRIMINAL RECORDS CHECKS TO FACILITATE BACKGROUND INVESTIGATIONS FOR FIREFIGHTER AND RESCUE SQUAD APPLICANTS.

Senator Gulley moved to amend the bill on Page 1, Lines 7-12. (See attached amendment.) The motion carried by voice vote.

Senator Winner moved to amend the bill on Page 1, Line 10 by deleting the word "career". The motion carried by voice vote.

Senator Odom moved to give the bill a favorable report as amended and roll it into a Committee Substitute and re-refer it to the Finance Committee. The motion carried by voice vote.

Representative Hunter was recognized to explain **House Bill 1140** - AN ACT TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.

After brief discussion by the Committee, Senator Cooper announced that the bill would be brought up at the next meeting.

There being no further business, the meeting adjourned at 11:00 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# May 29, 1997

| | | |
|---|---|---|
| HB 958 | Concealed Handgun Laws Amend. | Hightower |
| HB 1008 | Chiropractic Licensure Amend. | Watson |
| HB 1091 | Criminal Record Check by Private Business | Braswell |
| HB 1124 | Fire/Rescue Personnel Records Checks | Capps |
| HB 1140 | Littering/Require Commun. Service | Hunter |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 958
Committee Substitute Favorable 4/30/97
Proposed Committee Substitute H958-PCS6268

Short Title: Concealed Handgun Laws Amend. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONCEALED WEAPON AND CONCEALED HANDGUN PERMIT LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269(b) reads as rewritten:

"(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 and law enforcement 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."

Section 2. G.S. 14-269.2(g) reads as rewritten:

"(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) ~~Armed forces personnel, officers and soldiers of the militia and national guard, law enforcement personnel, fire fighters,~~ Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

Section 3. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

~~(1) Officers and enlisted personnel of the armed forces when in the discharge of their official duties as such and acting under orders requiring them to carry arms and weapons,~~

(1a) A person exempted by the provisions of G.S. 14-269(b),

~~(2) Civil officers of the United States while in the discharge of their official duties,~~

~~(3) Officers and soldiers of the militia and the State guard when on duty or called into service,~~

~~(4) Officers or employees of the State, or any county, city, or town charged with the execution of the laws of the State, when acting in the discharge of their official duties if authorized by law to carry weapons,~~

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 4. G.S. 14-277.2(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person exempted by the provisions of G.S. 14-269(b) or to persons authorized by State or federal law to carry dangerous weapons in the performance of their duties or to any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place."

Section 5. G.S. 14-415.22 reads as rewritten:

"**§ 14-415.22. Construction of Article.**

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun permit. The provisions of this Article shall not apply to a person who may lawfully carry a concealed weapon or handgun pursuant to G.S. 14-269(b). A person who may lawfully carry a concealed weapon or handgun pursuant to G.S. 14-269(b) shall not be prohibited from carrying the concealed weapon or handgun on property on which a notice is posted prohibiting the carrying of a concealed handgun, unless otherwise prohibited by statute."

Section 6. This act is effective when it becomes law.

**North Carolina General Assembly**
**Legislative Services Office**

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(919) 733-2578

May 28, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 958 - CONCEALED HANDGUN LAWS AMENDMENT**
**Proposed Senate Committee Substitute**
Representative Hightower

House Bill 958 amends the law regarding concealed weapons and concealed handguns.

Under current law, G.S. 14-269 makes it unlawful for any person to willfully and intentionally carry "concealed about his person" any deadly weapon or any concealed pistol or gun unless the person is on his or her own premises or the weapon is a handgun and the person has a concealed handgun permit. G.S. 14-269(b) creates an exemption to both the concealed handgun permit law and the concealed weapon law. The exemption applies to armed forces personnel when in discharge of their official duties and acting under orders requiring them to carry arms & weapons, federal civil officers in discharge of their official duties, militia and national guard when called into actual service, State and local officers charged with execution of State laws, and off-duty sworn law-enforcement officers under proper authority of their superiors.

**Section 1** of the bill provides that federal law enforcement officers are exempt from the concealed weapon prohibition while discharging their official duties.

**Sections 2-4** of the bill amend the General Statutes to provide that all persons who are exempt from the concealed weapon prohibition under G.S. 14-269(b) are also exempt from the prohibitions against carrying a concealed weapon on school premises (Section 2), on State property and in courthouses (Section 3), and in parades (Section 4). These three statutes currently exempt various State and federal officers and military personnel, but off-duty law enforcement officers are not included within the exceptions noted. As amended by this bill, the statutes would permit sworn law enforcement officers who have been appropriately authorized by their superior to carry a concealed weapon to carry such weapon on the proscribed premises.

**Section 5** of the bill clarifies the law regarding the applicability of the concealed carry permit law. It specifically declares that the Article does not apply to persons who may lawfully carry a concealed weapon pursuant G.S. 14-269(b). It also provides that a person who may lawfully carry a concealed weapon or handgun pursuant to the exemption may carry the weapon on posted property unless otherwise prohibited *by statute.*

The bill is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, May 29, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **958** Concealed Handgun Laws Amend.

| | |
|---|---|
| Draft Number: | PCS 6268 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

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May 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 1008 - CHIROPRACTIC LICENSURE AMENDMENTS -** Representative Watson.

House Bill 1008 amends the law governing licensing of chiropractors to require all necessary hours of post-graduate chiropractic education for a Doctor of Chiropractic degree be at an accredited or approved educational institution and allows an applicant to substitute examination scores from the national chiropractic exam for scores on the North Carolina exam.

The bill amends G.S. 90-143 to require that an applicant for a chiropractor's license have at least 4200 hours of accredited chiropractic education from an educational institution accredited by the Council on Chiropractic Education or an equivalent institution and that the applicant have received a Doctor of Chiropractic degree.

The bill also permits a license to be granted to a person whose scores on all parts of the National Board of Chiropractic Examiners examination equal or exceed the passing scores set by the North Carolina State Board of Chiropractic Examiners for its exam, who also satisfies all the other requirements for licensure.

The bill is effective when it becomes law.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

# HOUSE BILL 1008

Short Title: Chiropractic Licensure Amendments. (Public)

Sponsors: Representatives Watson; and Morris.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE EDUCATIONAL REQUIREMENTS FOR CHIROPRACTIC LICENSURE AND TO AUTHORIZE THE BOARD TO LICENSE PERSONS WHO HAVE PASSED THE NATIONAL CHIROPRACTIC EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-143 reads as rewritten:

"**§ 90-143. Definitions of chiropractic; examinations; educational requirements.**

(a) 'Chiropractic' is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body.

(b) It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as 'Board') to examine for ~~license~~ licensure to practice chiropractic in this State ~~every~~ any applicant who ~~complies with the following provisions:~~ is or will become, within 60 days of examination, a graduate of a four-year chiropractic college that is either accredited by the Council on Chiropractic Education or deemed by the Board to be the equivalent of such a college and who furnishes to the Board, in the manner prescribed by the Board, all of the following:

(1) ~~Furnishes proof~~ Satisfactory evidence of good moral ~~character;~~ character.

(2) ~~Satisfies the Board~~ Proof that the applicant has received a baccalaureate degree from a college or university accredited by a

regional accreditation body recognized by the United States Department of ~~Education; and~~ Education.

(3) ~~Satisfies the Board that the applicant can, within 60 days of the date of examination exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the Board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the Board. Provided, however, no license shall be issued until an applicant furnishes a diploma or proof of graduation, from an accredited chiropractic college, that meets the approval of the Board.~~ A transcript confirming that the applicant has received at least 4,200 hours of accredited chiropractic education. The Board shall not count any hours earned at an institution that is not accredited by the Council on Chiropractic Education or is not, as determined by the Board, the equivalent of such an institution.

The examination shall include, but not be limited to, the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice of chiropractic.

(c) The Board shall not issue a license to any applicant until the applicant exhibits a diploma or other proof that the Doctor of Chiropractic degree has been conferred.

(d) The Board may grant a license to an applicant if the applicant's scores on all parts of the examination given by the National Board of Chiropractic Examiners equal or exceed passing scores on the Board's examination and the applicant satisfies all other requirements for licensure as provided in this Article."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1008

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1008-ARV-001



Date 5-29 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill on page 2, lines 17-20,
by rewriting the sentence that begins on line 17 to read:
"The Board shall not count any hours earned at an institution that was not accredited by the Council on Chiropractic Education or was not, as determined by the Board, the equivalent of such an institution at the time the hours were earned."

and on page 2, line 32,
by rewriting that line to read:
"Section 2. This act becomes effective July 1, 1997."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

**North Carolina General Assembly**
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May 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 1091 - CRIMINAL RECORD CHECK BY PRIVATE BUSINESS**
- Representative Braswell

House Bill 1091 would permit adult care homes, nursing homes, and home care agencies to obtain criminal history record checks from private business entities instead of the SBI.

Currently adult care homes, nursing homes, and home care agencies are required to submit a request for criminal history record checks conducted within five days of the conditional offer of employment on all applicants for employment. These checks are to be conducted by the SBI based either on a name check or a fingerprint check. These criminal history record searches are limited to North Carolina records and do not include criminal offenses committed outside of this State. Name checks are less reliable than fingerprint based checks but may identify relevant criminal history for which a fingerprint record was not filed with the SBI.

Sections 1 and 2 of the bill would give these adult caring businesses the option to have this record check performed by a private business entity instead of the SBI. These homes might want to use a private entity instead of the SBI because of costs and turn-around time. Private business entity checks would be limited to name checks since private business entities do not have access to the fingerprint-based criminal databases.

Sections 1 and 2 also make clear that only criminal history information received from the Department of Justice is confidential since the information received from a private entity is based on public record.

The bill would be come effective when it becomes law.

H1091-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 131D-40. Criminal history record checks required for certain applicants for employment.**

(a) Requirement. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the adult care home or the administrator's designee shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. -- An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, "relevant offense" means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1091
Committee Substitute Favorable 4/30/97

Short Title: Crim. Record Check by Private Bus. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN CRIMINAL RECORD CHECKS TO BE CONDUCTED BY PRIVATE BUSINESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an ~~An~~ adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.3, or shall request a private business entity to conduct a criminal history record ~~check~~ check. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received ~~by the home~~ from the Department of Justice is confidential and may not be disclosed."

Section 2. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the

conditional offer of employment, a ~~A~~ nursing home or home care agency shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.3, or shall request a private business entity to conduct a criminal history record ~~check within five business days of making the conditional offer of employment.~~ check. All criminal history information received ~~by the home or agency~~ from the Department of Justice is confidential and may not be disclosed."

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

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May 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 1124 - FIRE/RESCUE PERSONNEL RECORDS CHECKS -** Representative Capps.

House Bill 1124 would authorize the Department of Justice to provide to local or volunteer fire departments or rescue squads, criminal history record checks of individuals who apply for a positions with the fire department or rescue squad.

The bill amends G.S. 114-19.1 by adding local and volunteer fire departments and rescue squads to those entities for which the Department may provide criminal record checks from the criminal history database maintained by the SBI. This record check would be based on North Carolina criminal history, not convictions for out-of-state offenses. The bill also states that the Department of Justice shall process these requests as voluntary noncriminal justice criminal history records checks, which is the lowest priority provided by law.

Unlike other criminal history record checks currently permitted, this section does not specify what the record check is to be based on (fingerprints, name, or both), whether the applicant has to consent to this type of check, and whether the information from the SBI must be kept confidential. The bill also does not specify the maximum fee that may be charged for this record check.

The bill would become effective when it becomes law.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.**

(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.
(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
(3) Adult care homes licensed under Chapter 131D of the General Statutes.
(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.
(5) Child placing agencies licensed under Chapter 131D of the General Statutes.
(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
(7) Hospitals licensed under Chapter 122C of the General Statutes.
(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.
(9) Licensed child day care facilities and registered and nonregistered child day care homes regulated by the State.
(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. -- A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the individual whose record is checked consents to the record check. The information shall be kept confidential by the entity that receives the information. Upon the disclosure of confidential information under this section by the entity, the Department may refuse to provide further criminal record checks to that entity.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 606, s. 1.

(d) Foster or Adoptive Parent. -- The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. -- The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars ($14.00).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 1124

Short Title: Fire/Rescue Personnel Records Checks. (Public)

Sponsors: Representatives Capps; and Watson.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE DEPARTMENT OF JUSTICE MAY PERFORM CRIMINAL RECORDS CHECKS TO FACILITATE BACKGROUND INVESTIGATIONS FOR FIREFIGHTER AND RESCUE SQUAD APPLICANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.1 is amended by adding a new subsection to read:

"(e) The Department of Justice may provide to a local or volunteer fire department or rescue squad a criminal history record check of any individual who applies for a position as a volunteer member or career employee of the fire department or rescue squad. The Department of Justice shall process these requests as voluntary noncriminal justice criminal history records checks."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1124

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1124-ARU-002



Date 5-29 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator

moves to amend the bill on page 1, lines 7 through 12, by rewriting the lines to read:

"Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

'§ 114-19.6. Criminal record checks of firefighter and rescue squad applicants.

(a) The Department of Justice may provide to a local or volunteer fire department or rescue squad a criminal history record check of any individual who applies for a position as a volunteer member or career employee of the fire department or rescue squad. A criminal record check shall be conducted in accordance with the provisions of G.S. 114-19.3(b) and the Department may charge a fee as provided for in G.S. 114-19.3(e). The Department of Justice shall process these requests as voluntary noncriminal justice criminal history records checks."

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

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 5-29-97

S. B. No. 1124 / AS AMENDED Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~ )
) Weinstein
Sen. )

1 moves to amend the bill on page 1, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "CAREER".
4
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SIGNED Leslie Winner

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

**North Carolina General Assembly**
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May 28, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 1140 - LITTERING / REQUIRE COMMUNITY SERVICE**
Representative R. Hunter

House Bill 1140 amends subsections (c) and (d) of G.S. 14-399 to require community service for misdemeanor non-commercial littering offenses.

**Littering in an amount up to 15 pounds** is a Class 3 misdemeanor. A first offense is currently punishable by a fine of $100 - $500. A second or subsequent offense is currently punishable by a fine of $100 - $1,000, and a judge may order the offender to pick up litter or perform other labor commensurate with the offense. House Bill 1140 would *require* at least 8 but not more than 24 hours of community service for a first offense; a second or subsequent offense would require community service of at least 24 but not more than 100 hours.

**Littering in an amount more than 15 pounds and up to 500 pounds** is a Class 3 misdemeanor currently punishable by a fine of $100 - $1,000; the court must require the offender to pick up litter or perform other community service. House Bill 1140 would require that the offender perform community service of not less than 24 hours nor more than 100 hours.

Littering in an amount exceeding 500 pounds, or in any quantity for commercial purposes, is a Class I felony and is not affected by this bill.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# HOUSE BILL 1140

Short Title: Littering/Require Comm. Service. (Public)

Sponsors: Representatives R. Hunter; Baddour, Hightower, and Mosley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural

products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for the first offense. In addition, the court shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense is punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court may order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.

(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management.

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, June 02, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **1008** Chiropractic Licensure Amendments

| | |
|---|---|
| Draft Number: | PCS 2337 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

H.B. **1124** Fire/Rescue Personnel Records Checks

| | |
|---|---|
| Draft Number: | PCS A390 |
| Sequential Referral: | None |
| Recommended Referral: | Finance |
| Long Title Amended: | Yes |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary Comm. — 5-29-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Carter Vadin | Office of Governor |
| Bill Alexander | NC PBA |
| JOE DIHOALE | Crime Control & Public Safety |
| Jane B. Gray | DOJ |
| JIM BARNARD | GRNC |
| C M Caron | NCCA |
| VANCE KINLAW | NC Board of Chiropractic Examiners |
| Jack Hoyle | |
| Mary Camilla | Mecklenburg County |
| DON McCORMACKDALE | NCRMA |
| Alan Miller | Bailey & Dixon LLP |
| L. Loges | BANK |
| Brenda Daugherty | Sprint |
| Richard O'Brien | PFFNC |
| | NC AFL-CIO |

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**JUNE 3, 1997**

The Senate Judiciary Committee met on Tuesday, June 3, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Mercer to explain **House Bill 915** - 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.

Senator Horton moved to amend the bill on Page 1, Line 16 by deleting the word "the" and substituting the words "Except as otherwise prohibited by this section, the". The motion carried by voice vote. (Amendment attached.)

Senator Reeves moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Representative Hunter was recognized to explain **House Bill 1140** - AN ACT TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.

Senator Horton moved to amend the bill on Page 2, Line 6 by changing the word "shall" to "may". The motion failed by voice vote.

Senators Carpenter and Ballantine moved to give the bill a favorable report. The motion carried by voice vote.

Senator Gulley was recognized to explain **Senate Bill 381** - AN ACT TO ESTABLISH A SYSTEM OF COMPLETE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 381 for discussion. The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Appropriations Committee. The motion carried by a 14-8 show-of-hands vote.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 3, 1997

| | | |
|---|---|---|
| SB 381 | N. C. Clean Election Act | Gulley |
| HB 915 | Firefighters/No Conflict | Mercer |
| HB 1140 | Littering/Require Commun. Service | Hunter |

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June 2, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, House Judiciary II Co-Counsel.

**RE:** **HOUSE BILL 915 - FIREFIGHTERS/NO CONFLICT** - Representative Mercer

House Bill 915 would permit persons primarily employed as a firefighter to also engage in fire inspection activities without it constituting a conflict of interest under the inspections statute.

The bill 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.

This 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.

The bill becomes effective when it becomes law.

H915-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§160A-411.1. Qualifications of inspectors.**

On and after the applicable date set forth in the schedule in G.S. 160A-411, no city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if he does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 6.)

**§160A-412. Duties and responsibilities.**

The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

(1) The construction of buildings and other structures;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
(4) Other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 915 DATE 6-3-97

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) HORTON
Sen. )

1 moves to amend the bill on page 1, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "THE" AND SUBSTITUTING
4 THE WORDS "EXCEPT AS OTHERWISE PROHIBITED
5 BY THIS SECTION, THE"
6
7
9
10
11
12
13
14
15
16
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18
19

SIGNED Horton

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

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May 28, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 1140 - LITTERING / REQUIRE COMMUNITY SERVICE**
Representative R. Hunter

House Bill 1140 amends subsections (c) and (d) of G.S. 14-399 to require community service for misdemeanor non-commercial littering offenses.

**Littering in an amount up to 15 pounds** is a Class 3 misdemeanor. A first offense is currently punishable by a fine of $100 - $500. A second or subsequent offense is currently punishable by a fine of $100 - $1,000, and a judge may order the offender to pick up litter or perform other labor commensurate with the offense. House Bill 1140 would *require* at least 8 but not more than 24 hours of community service for a first offense; a second or subsequent offense would require community service of at least 24 but not more than 100 hours.

**Littering in an amount more than 15 pounds and up to 500 pounds** is a Class 3 misdemeanor currently punishable by a fine of $100 - $1,000; the court must require the offender to pick up litter or perform other community service. House Bill 1140 would require that the offender perform community service of not less than 24 hours nor more than 100 hours.

Littering in an amount exceeding 500 pounds, or in any quantity for commercial purposes, is a Class I felony and is not affected by this bill.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# HOUSE BILL 1140

Short Title: Littering/Require Comm. Service. (Public)

Sponsors: Representatives R. Hunter; Baddour, Hightower, and Mosley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural

products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for the first offense. In addition, the court shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense is punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court may order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.

(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management.

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

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1140 DATE 6-2-97

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

COMMITTEE SUBSTITUTE _____

Rep. )
Sen. ) Horton

moves to amend the bill on page 2, line 6

(✓) WHICH CHANGES THE TITLE

by deleting the word "shall" and substituting the word "may";

and on page 2, line 12 by deleting the words "~~may~~ shall" and substituting the word "may";

and on page 1, line 2 by inserting after the word "SERVICE" and before the word "BE" the word "MAY"

and on page 1, line 2 by inserting at the beginning of that line the word "FIRST".

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, June 03, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **1140** Littering/Require Community Service
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

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April 8, 1997

TO: Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Senate Bill 381 – Clean Campaign Act.

**Senate Bill 381, introduced by Senator Gulley, would provide comprehensive public funding to candidates who agree to limit spending. The bill would go into effect for candidates in the year 2000 for Governor, Lieutenant Governor, other Council of State offices, and General Assembly.**

Candidates for those offices would have the choice of participating in the Clean Election Act or of financing their campaigns with no spending limits. But the system is designed to provide enough public funding that candidates of ordinary wealth would want to choose it.

To participate in the Clean Election Act, a candidate must:

1. Demonstrate outreach abilities and public support from those who will be voting for the office by collecting a specified number of $5 qualifying contributions:
   - 6,000/Governor.
   - 3,000/Lt. Gov. and other Council of State.
   - 300/State Senate.
   - 200/State House.

2. Agree not to spend private money on the campaign.

3. Agree to strict spending limits designed to be practical but also to control the growth of campaign costs.

A candidate who is certified to participate in the North Carolina Clean Elections option would:

- Receive a specific amount of funding based upon the average amount spent over the last two election cycles. All participating candidates for the same office would get the same amount. That would be all that candidate could spend, unless outspent by a nonparticipating opponent.

- Receive an additional amount of matching funding, if the candidate is outspent by nonparticipating opponents. These rescue funds could go up to a ceiling of double the Act's regular spending limits. (This provision would also match independent expenditures against the participating candidate.) This provision is a recognition that, under the U.S. Supreme Court rulings in *Buckley v. Valeo* and more recent cases, there can be no involuntary limits placed on spending by a billionaire or on independent expenditures.

- Return all unspent funds to the N.C. Clean Elections Fund.

The Clean Elections option would be financed by qualifying contributions of the candidates, by voluntary contributions, and by appropriations the General Assembly would be directed to make from the General Fund. The balance and the financing mechanism of the existing N.C. Candidates Financing Fund would be converted to the Clean Elections Fund. The Candidates Financing Fund has brought in $230,145 since 1988 through taxpayer contributions of their refunds on the State Income Tax Return and other contributions.

*(The bill would not affect the N.C. Political Parties Financing Fund, which is supported by a $1 checkoff on the State Income Tax Return and goes to the two major parties.)*

The Act would be administered by a newly created Commission on Election Practices. The Commission would consist of five members. They would be appointed by the Governor and confirmed by the General Assembly. No more than two commissioners could be members of the same political party and none could be elected officials or candidates. The Act would direct the Governor, with the advice and consent of the legislative leadership, to set up a nomination period to bring forth qualified individuals for appointment.

Effective immediately, the Act would change the current system by reducing the contribution limitation from $4,000/donor/donee/election to $500. It would also remove the exemption that political parties now have from the contribution limitation.

S381-SMRR-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 381

Short Title: N.C. Clean Election Act. (Public)

Sponsors: Senators Gulley; Ballance, Dannelly, Forrester, Jordan, Kinnaird, Lee, Lucas, Martin of Guilford, Miller, Odom, and Winner.

Referred to: Judiciary.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SYSTEM OF COMPLETE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 22D.

"The North Carolina Clean Election Act.

"**§ 163-278.61. Definitions.**

When used in this Article:

(1) The term 'certified candidate' means a candidate running for office who chooses to participate in the North Carolina Clean Election Act and who is certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(2) The term 'Commission' means the North Carolina Commission on Election Practices, as established under G.S. 163-278.65.

(3) The terms 'contested primary election' and 'contested general election' mean elections in which there are more candidates than the number to be elected.

(4) The terms 'contribution' and 'expenditure' have the same meaning as defined in G.S. 163-278.6.

(5) The term 'election cycle' comprises the primary, runoff primary, and general election for election to the same term of the same office.

(6) The term 'Fund' means the North Carolina Clean Election Fund established in G.S. 163-278.63.

(7) The term 'nonparticipating candidate' means a candidate running for Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative who does not choose to participate in the North Carolina Clean Election Act and who is not seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(8) The term 'office', as used in this Article, means Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative.

(9) The term 'participating candidate' means a candidate who is running for office who is seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(10) The term 'qualifying contribution' means a donation of five dollars ($5.00) in the form of a check or money order payable to the Clean Election Fund in support of a candidate that is:

a. Made by any registered voter who is eligible to vote for the office which the candidate is seeking;

b. Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the candidate; and

c. Acknowledged by a written receipt that identifies the name, address, occupation, and place of employment of the donor on forms provided by the Commission.

(11) The term 'qualifying period' means:

a. For participating candidates for Governor, Lieutenant Governor, and other offices in the Council of State, the period beginning November 1 immediately preceding the election year and ending at noon on the third Monday in February of the election year.

b. For participating candidates for State Senator and State Representative, the period beginning January 1 of the election year and ending at noon on the first Monday in February of the election year.

(12) The term 'seed money contribution' means a contribution of no more than one hundred dollars ($100.00) made to a candidate by an individual but not a political committee, including contributions from the candidate and that candidate's spouse, parents, brothers, and sisters. A candidate may collect and spend seed money contributions throughout the qualifying period and during the 30

days immediately preceding the qualifying period. Seed money contributions are for the primary purpose of enabling participating candidates to collect qualifying contributions and shall be reported according to procedures developed by the Commission in the same method as qualifying contributions under subdivision (10) of this section. A candidate may not collect seed money contributions after certification as a Clean Election Act candidate. Candidates may not spend seed money after certification for campaign purposes, and may not spend seed money for any purpose after certification and before the general election of the election cycle for which they were certified, but after the election cycle may spend unspent seed money for noncampaign purposes.

"**§ 163-278.62. Purpose and establishment of North Carolina Clean Election Act.**

The purpose of this Article is to ensure the vitality of democratic elections in North Carolina, to the end that any citizen of this State, regardless of personal wealth or income, can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the First Amendment rights of candidates from being financially overwhelmed by the expenditures of their opponents or by independent expenditures. Accordingly, this Article establishes the North Carolina Clean Election Fund as an alternative campaign finance option available to candidates running for office. This Article is available to candidates for elections to be held in 2000 and thereafter. The Commission shall administer this Article and the North Carolina Clean Election Fund. Candidates participating in this Article must also comply with all other applicable election and campaign laws and rules.

"**§ 163-278.63. North Carolina Clean Election Fund established; sources of funding.**

(a) Establishment of Fund. -- The North Carolina Clean Election Act is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Commission related to this Article. The Fund is a special, dedicated, nonlapsing fund. Any interest generated by the Fund is credited to the Fund. The Commission shall administer the Fund.

(b) Sources of Funding. -- Money received from the following sources must be deposited in the Fund:

(1) The qualifying contributions required of Clean Election Act candidates under G.S. 163-278.64, once submitted to the Commission;

(2) Other unspent Clean Election Act revenues distributed to any Clean Election Act candidate who does not remain a candidate until the primary or general election for which they were distributed, or such revenues that remain unspent by a candidate following the date of the primary election or general election for which they were distributed;

(3) Any money transferred to the Clean Election Fund from the North Carolina Candidates Financing Fund;

(4) Contributions made to the Clean Election Fund by individual taxpayers pursuant to G.S. 105-269.6;

(5) Voluntary donations made directly to the Clean Election Fund; and

(6) General Fund monies appropriated for the use of the Clean Election Fund by the General Assembly pursuant to subsection (c) of this section.

(c) Determination of Fund Amount. -- By April 1, 1999, and every two years thereafter, the Commission shall prepare and provide to the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the North Carolina Clean Election Act. In its report, the Commission shall set out the funds received to date, the expected needs of the Fund during the next election cycle, and the amount of the appropriation from the General Assembly that will be needed for the biennium. The General Assembly shall include in its appropriations from the General Fund that year at least the amount that the Commission states in its report will be needed. In addition, the General Assembly shall reserve for the first fiscal year of the biennium at least fifteen percent (15%) of the amount of funds the Commission states in its report that it will need during the biennium, to be used by the Commission to cover any disbursement under G.S. 163-278.64 in excess of the amount of its direct appropriation.

"**§ 163-278.64. Terms of participation.**

(a) Declaration of Intent. -- Any individual choosing to participate in the North Carolina Clean Election Act shall first file with the Commission a declaration of intent to participate in the Act as a candidate for a stated office. The declaration of intent shall be filed with the Commission prior to or during the qualifying period, except as provided under subsection (k) of this section, according to forms and procedures developed by the Commission. A candidate choosing to participate in the Clean Election Act must submit a declaration of intent prior to collecting any qualifying contributions under this Article.

A candidate who files a declaration of intent shall swear or affirm that the candidate has complied with and will continue to comply with Clean Election Act contribution and expenditure limits and will comply with all other requirements set forth in this Article, or promulgated by the Commission.

(b) Restrictions on Contributions and Expenditures for Participating Candidates. -- After becoming a participating candidate as defined by G.S. 163-278.61(6) and prior to certification, participating candidates shall not accept contributions, except for seed money contributions or qualifying contributions. A participating candidate shall limit expenditures and seed money contributions to the following amounts:

(1) For a candidate for Governor, two hundred thousand dollars ($200,000).

(2) For a candidate for Lieutenant Governor or other office in the Council of State, one hundred thousand dollars ($100,000).

(3) For a candidate for State Senator, six thousand dollars ($6,000).

(4) For a candidate for State Representative, four thousand dollars ($4,000).

(c) Qualifying Contributions. -- Participating candidates must obtain qualifying contributions as follows:

(1) For a candidate for Governor, at least 6,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(2) For a candidate for Lieutenant Governor or other office in the Council of State, at least 3,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(3) For a candidate for State Senator, at least 300 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(4) For a candidate for State Representative, at least 200 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(d) Filing With the Commission. -- All participating candidates shall file qualifying contributions with the Commission during the qualifying period according to procedures developed by the Commission, except as provided under subsection (k) of this section.

(e) Certification of Clean Election Act Candidates. -- Upon receipt of a final submittal of qualifying contributions by a participating candidate, the Commission shall determine whether or not the candidate has:

(1) Signed and filed a declaration of intent to participate in this Article;

(2) Submitted the appropriate number of qualifying contributions;

(3) Qualified as a candidate under G.S. 163-106, 163-98, 163-122, 163-123, or 163-114;

(4) Complied with seed money contributions or expenditure restrictions; and

(5) Otherwise met the requirements for participation in this Article.

The Commission shall certify candidates complying with the requirements of this section as Clean Election Act candidates as soon as possible and no later than three days after final submittal of qualifying contributions.

Certified candidates shall comply with all requirements of this Article after certification and throughout the primary election and general election periods. Failure to do so is a violation of this Article.

(f) Restrictions on Contributions and Expenditures for Certified Candidates. -- After certification, a candidate shall limit campaign expenditures and debts to the revenues distributed to the candidate from the Fund and may not accept any contributions unless specifically authorized by the Commission, provided that a

candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of a candidate's public financing. All revenues distributed to certified candidates must be used for campaign-related purposes. The Commission shall publish guidelines outlining permissible campaign-related expenditures. A candidate shall return to the Fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before a primary or election for which the Fund money was distributed. A candidate shall return to the Fund any amount that was unspent and uncommitted after the date of the primary election or general election for which the Fund money was distributed.

(g) Timing of Fund Distribution. -- The Commission shall distribute to certified candidates revenues from the Fund in amounts determined under subsection (h) of this section in the following manner:

(1) Within three days after certification, for candidates certified before the first Monday in February of the election year, revenues from the Fund as if the candidates are in an uncontested primary election.

(2) Within three days after the first Monday in February of the election year, for primary election certified candidates, revenues from the Fund according to whether the candidate is in a contested or uncontested primary election, reduced by any amounts previously distributed under subdivision (1) of this subsection.

(3) Within the earlier of the following: within three days after the primary election, or within three days after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of the first opposition candidate, for general election certified candidates, revenues from the Fund according to whether the candidate is in a contested general election. No funds are distributed for uncontested general elections.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the Fund.

(h) Amount of Fund Distribution. -- By March 1, 1999, and no less frequently than every two or four years thereafter, as appropriate, the Commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows:

(1) Contested Primary Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding two primary elections for that office, provided that each of the following shall be considered a separate office for purposes of calculating the average:

a. Governor.

b. Lieutenant Governor and other offices in the Council of State shall be considered together as one separate office.

c. All State Senator seats, except that the amount for a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district.

d. All State Representative seats, except that the amount for a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district, and the amount for a candidate in a three-seat district shall be triple the amount for a candidate in a single-seat district.

(2) Uncontested Primary Elections. -- The amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races, or for contested races if the amount is lower, for the immediately preceding two primary elections for that office as defined in subdivision (1) of this subsection.

(3) Contested General Elections. -- The amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races each for the immediately preceding two general elections for that office as defined in subdivision (1) of this subsection.

(4) Uncontested General Elections. -- No revenues shall be distributed for uncontested general elections.

If the immediately preceding two election cycles do not contain sufficient electoral data, the Commission shall use information from the most recent applicable elections.

(i) Matching Funds. -- When any campaign, finance, or election report or group of reports show that the sum of a candidate's expenditures or obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate or in opposition to an opposing Clean Election Act candidate, exceeds the distribution amount under subsection (h) of this section, the Commission shall issue immediately to any opposing Clean Election Act candidate an additional amount equivalent to the reported excess. Any estimate reported pursuant to subsection (m) of this section shall be treated as an expenditure for purposes of release of matching funds under this subsection. Matching funds are limited to two times the amount originally distributed under subdivision (1), (2), or (3) of subsection (h) whichever is applicable.

(j) Unaffiliated Candidates. -- Unaffiliated candidates certified pursuant to G.S. 163-122 before 12:00 noon on the first Monday in February of the election year shall be eligible for revenues from the Fund in the same amounts and at the same time as uncontested primary election candidates and general election candidates as specified in subsections (g) and (h) of this section. For unaffiliated candidates not certified by 12:00 noon on the first Monday in February, the deadline for filing qualifying contributions is 12:00 noon on the last Friday in June of the election year. Unaffiliated candidates certified after noon on the first Friday in February shall be

eligible for revenues from the Fund in the same amounts as general election candidates, as specified in subsections (g) and (h).

(k) Other Procedures. -- For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Commission shall establish by rule procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues.

(l) Reporting by Participating and Certified Candidates. -- Notwithstanding other provisions of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, and related activities to the Commission according to procedures developed by the Commission. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues form the Fund remaining unspent shall return all revenues to the Commission. In developing these procedures, the Commission shall utilize existing campaign reporting procedures wherever practicable. The Commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

(m) Reporting by NonCertified Candidates. -- Any noncertified candidate who has as an opponent a certified candidate shall report to the Commission 20 days before any election an estimate of the amount that the noncertified candidate intends to spend. Any individual or political committee that intends to make expenditures to influence an election containing a certified candidate shall report to the Commission 20 days before the day of the election the amount that individual or political committee intends to spend to influence the election. Reports required by this subsection shall be made according to procedures which shall be developed by the Commission.

(n) Appeals. -- The procedure for challenging a certification decision by the Commission is as follows:

(1) A person aggrieved by a certification decision may appeal to the full Commission within three days of the certification decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five days after an appeal is properly made, and after due notice is given to the parties, the Commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the Commission's decision was improper. The Commission shall rule on the appeal within three days after the completion of the hearing.

(3) The challenger or a candidate may appeal the decision of the Commission by commencing an action in superior court.

(4) Candidates whose certification by the Commission as a Clean Election Act candidate is revoked on appeal shall return to the Commission any unspent revenues distributed by the Fund. If the Commission or court finds that an appeal was made frivolously or to result in delay or hardship, the Commission or court may

sanction the moving party by requiring the party to pay costs of the Commission, court, and opposing parties, if any.

"**§ 163-278.65. The Commission on Election Practices.**

(a) Establishment of the Commission. -- There is established the North Carolina Commission on Election Practices.

(b) The Commission shall consist of five members to be appointed as follows:

(1) By March 31, 1998, and as needed thereafter, the Governor, with the advice of the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall establish and publish a nomination period for members of the public, groups, and organizations to nominate qualified individuals to the Governor for appointment to the Commission.

(2) The Governor shall appoint the members of the Commission, taking into consideration nominations made during the nomination period, subject to confirmation by the General Assembly by joint resolution. No more than two Commission members shall be affiliated with the same political party. No elected official or candidate for elective office shall be eligible to be a member of the Commission. The Commission members shall be appointed and confirmed by October 1, 1998.

(3) Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot under the supervision of the Secretary of State. Thereafter, appointees are appointed to serve four-year terms. A person may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1.

(4) One of the Commission members shall be elected by the members as chair.

(5) A vacancy during an unexpired term must be filled as provided in this subsection, but only for the unexpired portion of the term.

"**§ 163-278.66. Commission to adopt rules.**

The Commission shall adopt rules to ensure effective administration of this Article. Such rules shall include, but not be limited to, procedures for obtaining qualifying contributions, certification as a Clean Election Act candidate, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with the Clean Election Act.

"**§ 163-278.67. Violations.**

(a) Civil Penalty. -- In addition to any other penalties that may be applicable, any person who violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the

Fund all amounts distributed to the candidate from the Fund. If the Commission makes a determination that a violation of this Article has occurred, the Commission shall impose a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the Fund. In determining whether or not a candidate is in violation of the expenditure limits of this Article, the Commission may consider as a mitigating factor any circumstances out of the person's control.

(b) Class I Felony. -- Any person who willfully or knowingly violates this Article or rules of the Commission or knowingly makes a false statement in any report required by this Article is guilty of a Class I felony and, if certified as a Clean Election Act candidate, must return to the Fund all amounts distributed to the candidate."

Section 2. Article 22C of Chapter 163 of the General Statutes is repealed.

Section 3. (a) G.S. 105-269.6 reads as rewritten:

"**§ 105-269.6. Contribution of individual income tax refund to ~~Candidates Financing Fund.~~ the North Carolina Clean Election Fund.**

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute all or part of the refund to the ~~North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes.~~ North Carolina Clean Election Fund created in Article 22D of Chapter 163 of the General Statutes. The Secretary ~~of Revenue~~ shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary ~~of Revenue~~ shall, on a quarterly basis, transmit the contributions made pursuant to this section to the State Treasurer for credit to the ~~North Carolina Candidates Financing Fund.~~ North Carolina Clean Election Fund. Any interest earned on funds so credited shall be credited to the Fund."

(b) The Secretary of Revenue shall transfer to the North Carolina Clean Election Fund any funds contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its amendment by this section but not yet transferred to that Fund.

Section 4. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

Section 5. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 6. This act is effective when it becomes law. Section 4 of this act applies to any contribution, primary, or election occurring on or after the date it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 381
Proposed Committee Substitute -- S381-PCSRR-002

Short Title: N.C. Clean Election Act. (Public)

Sponsors:

Referred to: Judiciary.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SYSTEM OF COMPLETE PUBLIC FINANCING OF ELECTIONS FOR GOVERNOR, COUNCIL OF STATE, AND GENERAL ASSEMBLY; AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 22D.

"The North Carolina Clean Election Act.

"§ 163-278.61. Definitions.

When used in this Article:

(1) The term 'certified candidate' means a candidate running for office who chooses to participate in the North Carolina Clean Election Act and who is certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(2) The term 'Commission' means the North Carolina Commission on Election Practices, as established under G.S. 163-278.65.

(3) The terms 'contested primary election' and 'contested general election' mean elections in which there are more candidates than the number to be elected.

(4) The terms 'contribution' and 'expenditure' have the same meaning as defined in G.S. 163-278.6.

(5) The term 'election cycle' comprises the primary, runoff primary, and general election for election to the same term of the same office.

(6) The term 'Fund' means the North Carolina Clean Election Fund established in G.S. 163-278.63.

(7) The term 'nonparticipating candidate' means a candidate running for Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative who does not choose to participate in the North Carolina Clean Election Act and who is not seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(8) The term 'office', as used in this Article, means Governor, Lieutenant Governor, other office in the Council of State, State Senator, or State Representative.

(9) The term 'participating candidate' means a candidate who is running for office who is seeking to be certified as a Clean Election Act candidate under G.S. 163-278.64(e).

(10) The term 'qualifying contribution' means a donation of five dollars ($5.00) in the form of a check or money order payable to the Clean Election Fund in support of a candidate that is:

a. Made by any registered voter who is eligible to vote for the office which the candidate is seeking;

b. Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the candidate; and

c. Acknowledged by a written receipt that identifies the name, address, occupation, and place of employment of the donor on forms provided by the Commission.

(11) The term 'qualifying period' means:

a. For participating candidates for Governor, Lieutenant Governor, and other offices in the Council of State, the period beginning November 1 immediately preceding the election year and ending at noon on the third Monday in February of the election year.

b. For participating candidates for State Senator and State Representative, the period beginning January 1 of the election year and ending at noon on the first Monday in February of the election year.

(12) The term 'seed money contribution' means a contribution of no more than one hundred dollars ($100.00) made to a candidate by an individual but not a political committee, including contributions from the candidate and that candidate's spouse, parents, brothers, and sisters. A candidate may collect and spend seed money contributions throughout the qualifying period and during the 30 days immediately preceding the qualifying period. Seed money contributions are for the primary purpose of enabling participating candidates to collect qualifying contributions and shall be reported according to procedures developed by the Commission in the same method as qualifying contributions under subdivision (10) of this section. A candidate may not collect seed money contributions after certification as a Clean Election Act candidate. Candidates may not spend seed money after certification for campaign purposes, and may not spend seed money for any purpose after certification and before the general election of the election cycle for which they were certified, but after the election cycle may spend unspent seed money for noncampaign purposes.

"§ 163-278.62. Purpose and establishment of North Carolina Clean Election Act.

The purpose of this Article is to ensure the vitality of democratic elections in North Carolina, to the end that any citizen of this State, regardless of personal wealth or income, can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the First Amendment rights of candidates from being financially overwhelmed by the expenditures of their opponents or by independent expenditures. Accordingly, this Article establishes the North Carolina Clean Election Fund as an alternative campaign finance option available to candidates running for office. This Article is available to candidates for elections to be held in 2000 and thereafter. The Commission shall administer this Article and the North Carolina Clean Election Fund. Candidates participating in

this Article must also comply with all other applicable election and campaign laws and rules.

"§ 163-278.63. North Carolina Clean Election Fund established; sources of funding.

(a) Establishment of Fund. -- The North Carolina Clean Election Act is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Commission related to this Article. The Fund is a special, dedicated, nonlapsing fund. Any interest generated by the Fund is credited to the Fund. The Commission shall administer the Fund.

(b) Sources of Funding. -- Money received from the following sources must be deposited in the Fund:

(1) The qualifying contributions required of Clean Election Act candidates under G.S. 163-278.64, once submitted to the Commission;

(2) Other unspent Clean Election Act revenues distributed to any Clean Election Act candidate who does not remain a candidate until the primary or general election for which they were distributed, or such revenues that remain unspent by a candidate following the date of the primary election or general election for which they were distributed;

(3) Any money transferred to the Clean Election Fund from the North Carolina Candidates Financing Fund;

(4) Contributions made to the Clean Election Fund by individual taxpayers pursuant to G.S. 105-269.6;

(5) Voluntary donations made directly to the Clean Election Fund; and

(6) General Fund monies appropriated for the use of the Clean Election Fund by the General Assembly pursuant to subsection (c) of this section.

(c) Determination of Fund Amount. -- By April 1, 1999, and every two years thereafter, the Commission shall prepare and provide to the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the North Carolina Clean Election Act. In its report, the Commission shall set out the funds received to date, the expected needs of the Fund during the next election cycle, and the amount of the appropriation from the General Assembly that will be needed for the biennium. The General Assembly shall include in its appropriations from the General Fund that year at least the amount that the Commission states in its report will be needed. In addition, the General

Assembly shall reserve for the first fiscal year of the biennium at least fifteen percent (15%) of the amount of funds the Commission states in its report that it will need during the biennium, to be used by the Commission to cover any disbursement under G.S. 163-278.64 in excess of the amount of its direct appropriation.

"**§ 163-278.64. Terms of participation.**

(a) Declaration of Intent. -- Any individual choosing to participate in the North Carolina Clean Election Act shall first file with the Commission a declaration of intent to participate in the Act as a candidate for a stated office. The declaration of intent shall be filed with the Commission prior to or during the qualifying period, except as provided under subsection (l) of this section, according to forms and procedures developed by the Commission. A candidate choosing to participate in the Clean Election Act must submit a declaration of intent prior to collecting any qualifying contributions under this Article.

A candidate who files a declaration of intent shall swear or affirm that the candidate has complied with and will continue to comply with Clean Election Act contribution and expenditure limits and will comply with all other requirements set forth in this Article, or promulgated by the Commission.

(b) Restrictions on Contributions and Expenditures for Participating Candidates. -- After becoming a participating candidate as defined by G.S. 163-278.61(6) and prior to certification, participating candidates shall not accept contributions, except for seed money contributions or qualifying contributions. A participating candidate shall limit expenditures and seed money contributions to the following amounts:

(1) For a candidate for Governor, two hundred thousand dollars ($200,000).

(2) For a candidate for Lieutenant Governor or other office in the Council of State, one hundred thousand dollars ($100,000).

(3) For a candidate for State Senator, six thousand dollars ($6,000).

(4) For a candidate for State Representative, four thousand dollars ($4,000).

(c) Qualifying Contributions. -- Participating candidates must obtain qualifying contributions as follows:

(1) For a candidate for Governor, at least 6,000 verified registered North Carolina voters shall

have supported the candidacy by providing a qualifying contribution to that candidate.

(2) For a candidate for Lieutenant Governor or other office in the Council of State, at least 3,000 verified registered North Carolina voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(3) For a candidate for State Senator, at least 300 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

(4) For a candidate for State Representative, at least 200 voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(d) Filing With the Commission. -- All participating candidates shall file qualifying contributions with the Commission during the qualifying period according to procedures developed by the Commission, except as provided under subsection (l) of this section.

(e) Certification of Clean Election Act Candidates. -- Upon receipt of a final submittal of qualifying contributions by a participating candidate, the Commission shall determine whether or not the candidate has:

(1) Signed and filed a declaration of intent to participate in this Article;

(2) Submitted the appropriate number of qualifying contributions;

(3) Qualified as a candidate under G.S. 163-106, 163-98, 163-122, 163-123, or 163-114;

(4) Complied with seed money contributions or expenditure restrictions; and

(5) Otherwise met the requirements for participation in this Article.

The Commission shall certify candidates complying with the requirements of this section as Clean Election Act candidates as soon as possible and no later than three days after final submittal of qualifying contributions.

Certified candidates shall comply with all requirements of this Article after certification and throughout the primary election and general election periods. Failure to do so is a violation of this Article.

(f) Restrictions on Contributions and Expenditures for Certified Candidates. -- After certification, a candidate shall limit campaign expenditures and debts to the revenues distributed to the candidate from the Fund and may not accept any contributions unless specifically authorized by the Commission, provided that a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of a candidate's public financing. All revenues distributed to certified candidates must be used for campaign-related purposes. The Commission shall publish guidelines outlining permissible campaign-related expenditures. A candidate shall return to the Fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before a primary or election for which the Fund money was distributed. A candidate shall return to the Fund any amount that was unspent and uncommitted after the date of the primary election or general election for which the Fund money was distributed.

(g) Timing of Fund Distribution. -- The Commission shall distribute to certified candidates revenues from the Fund in amounts determined under subsection (h) of this section in the following manner:

(1) Within three days after certification, for candidates certified before the first Monday in February of the election year, revenues from the Fund as if the candidates are in an uncontested primary election.

(2) Within three days after the first Monday in February of the election year, for primary election certified candidates, revenues from the Fund according to whether the candidate is in a contested or uncontested primary election, reduced by any amounts previously distributed under subdivision (1) of this subsection.

(3) Within the earlier of the following: within three days after the primary election, or within three days after the certification pursuant to G.S. 163-122, 163-123, or 163-98 of the first opposition candidate, for general election certified candidates, revenues from the Fund according to whether the candidate is in a contested general election. No funds are distributed for uncontested general elections.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the Fund.

(h) Amount of Fund Distribution. -- By March 1, 1999, and no less frequently than every two or four years thereafter, as appropriate, the Commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows:

(1) Contested Primary Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by the number of highest vote-receiving candidates equal to twice the number of candidates to be nominated during all contested primary election races for the immediately preceding two primary elections for that office, provided that each of the following shall be considered a separate office for purposes of calculating the average:

a. Governor.

b. Lieutenant Governor and other offices in the Council of State shall be considered together as one separate office.

c. Each State Senate district seat, except that the amount to be distributed to a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district.

d. Each State Representative district seat, except that the amount to be distributed to a candidate in a two-seat district shall be double the amount for a candidate in a single-seat district, and the amount to be distributed to a candidate in a three-seat district shall be triple the amount for a candidate in a single-seat district.

(2) Uncontested Primary Elections. -- The amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races, or for contested races if the amount is lower, for the immediately preceding two primary elections for that office as defined in subdivision (1) of this subsection.

(3) Contested General Elections. -- The amount of revenues to be distributed is the average amount of

campaign expenditures made by the number of highest vote-receiving candidates equal to twice the number to be elected during all contested general election races for the immediately preceding two general elections for that office as defined in subdivision (1) of this subsection.

(4) Uncontested General Elections. -- No revenues shall be distributed for uncontested general elections.

If the immediately preceding two election cycles do not contain sufficient data for the Commission to determine the amount to be distributed for an office, the Commission shall use data from the most recent applicable elections for that office. If no applicable elections for that office contain sufficient data, the Commission shall set an amount based on data from elections for comparable offices.

(i) Reporting by Noncertified Candidates. -- Any noncertified candidate who has as an opponent a certified candidate shall report to the Commission 20 days before any election an estimate of the amount that the noncertified candidate intends to spend. Any individual or political committee that intends to make expenditures to influence an election containing a certified candidate shall report to the Commission 20 days before the day of the election the amount that individual or political committee intends to spend to influence the election. Reports required by this subsection shall be made according to procedures which shall be developed by the Commission.

(j) Matching Funds. -- When any campaign, finance, or election report or group of reports show that the sum of a candidate's expenditures or obligations made, or funds raised or borrowed, whichever is greater, alone or in conjunction with expenditures made independently of the candidate to influence the election on behalf of the candidate or in opposition to an opposing Clean Election Act candidate, exceeds the distribution amount under subsection (h) of this section, the Commission shall issue immediately to any opposing Clean Election Act candidate an additional amount equivalent to the reported excess. Any estimate reported pursuant to subsection (i) of this section shall be treated as an expenditure for purposes of release of matching funds under this subsection. Total matching funds to any candidate in an election are limited to an amount equal to the amount originally distributed under subdivision (1), (2), or (3) of subsection (h), whichever is applicable.

(k) Unaffiliated Candidates. -- Unaffiliated candidates certified pursuant to G.S. 163-122 before 12:00 noon on the first

Monday in February of the election year shall be eligible for revenues from the Fund in the same amounts and at the same time as uncontested primary election candidates and general election candidates as specified in subsections (g) and (h) of this section. For unaffiliated candidates not certified by 12:00 noon on the first Monday in February, the deadline for filing qualifying contributions is 12:00 noon on the last Friday in June of the election year. Unaffiliated candidates certified after noon on the first Friday in February shall be eligible for revenues from the Fund in the same amounts as general election candidates, as specified in subsections (g) and (h).

(l) Other Procedures. -- For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Commission shall establish by rule procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues.

(m) Reporting by Participating and Certified Candidates. -- Notwithstanding other provisions of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, and related activities to the Commission according to procedures developed by the Commission. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues form the Fund remaining unspent shall return all revenues to the Commission. In developing these procedures, the Commission shall utilize existing campaign reporting procedures wherever practicable. The Commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

(n) Appeals. -- The procedure for challenging a certification decision by the Commission is as follows:

(1) A person aggrieved by a certification decision may appeal to the full Commission within three days of the certification decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five days after an appeal is properly made, and after due notice is given to the parties, the Commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the Commission's decision was improper. The Commission shall rule on the appeal within three days after the completion of the hearing.

(3) The challenger or a candidate may appeal the decision of the Commission by commencing an action in superior court.

(4) Candidates whose certification by the Commission as a Clean Election Act candidate is revoked on appeal shall return to the Commission any unspent revenues distributed by the Fund. If the Commission or court finds that an appeal was made frivolously or to result in delay or hardship, the Commission or court may sanction the moving party by requiring the party to pay costs of the Commission, court, and opposing parties, if any.

"§ 163-278.65. The Commission on Election Practices.

(a) Establishment of the Commission. -- There is established the North Carolina Commission on Election Practices.

(b) The Commission shall consist of five members to be appointed as follows:

(1) By March 31, 1998, and as needed thereafter, the Governor, with the advice of the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall establish and publish a nomination period for members of the public, groups, and organizations to nominate qualified individuals to the Governor for appointment to the Commission.

(2) The Governor shall appoint the members of the Commission, taking into consideration nominations made during the nomination period, subject to confirmation by the General Assembly by joint resolution. No more than two Commission members shall be affiliated with the same political party. No elected official or candidate for elective office shall be eligible to be a member of the Commission. The Commission members shall be appointed and confirmed by October 1, 1998.

(3) Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot under the supervision of the Secretary of State. Thereafter, appointees are appointed to serve four-year terms. A person may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1.

(4) One of the Commission members shall be elected by the members as chair.

(5) A vacancy during an unexpired term must be filled as provided in this subsection, but only for the unexpired portion of the term.

"§ 163-278.66. Commission to adopt rules.

The Commission shall adopt rules to ensure effective administration of this Article. Such rules shall include, but not be limited to, procedures for obtaining qualifying contributions, certification as a Clean Election Act candidate, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with the Clean Election Act.

"§ 163-278.67. Violations.

(a) Civil Penalty. -- In addition to any other penalties that may be applicable, any person who violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Commission makes a determination that a violation of this Article has occurred, the Commission shall impose a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the Fund. In determining whether or not a candidate is in violation of the expenditure limits of this Article, the Commission may consider as a mitigating factor any circumstances out of the person's control.

(b) Class I Felony. -- Any person who willfully or knowingly violates this Article or rules of the Commission or knowingly makes a false statement in any report required by this Article is guilty of a Class I felony and, if certified as a Clean Election Act candidate, must return to the Fund all amounts distributed to the candidate."

Section 2. Article 22C of Chapter 163 of the General Statutes is repealed.

Section 3. (a) G.S. 105-269.6 reads as rewritten:

"§ 105-269.6. Contribution of individual income tax refund to ~~Candidates Financing Fund.~~ the North Carolina Clean Election Fund.

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute

all or part of the refund to the ~~North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes.~~ North Carolina Clean Election Fund created in Article 22D of Chapter 163 of the General Statutes. The Secretary ~~of Revenue~~ shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary ~~of Revenue~~ shall, on a quarterly basis, transmit the contributions made pursuant to this section to the State Treasurer for credit to the ~~North Carolina Candidates Financing Fund.~~ North Carolina Clean Election Fund. Any interest earned on funds so credited shall be credited to the Fund."

(b) The Secretary of Revenue shall transfer to the North Carolina Clean Election Fund any funds contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its amendment by this section but not yet transferred to that Fund.

Section 4. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four thousand dollars ($4,000)~~ five hundred dollars ($500.00) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the

ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

Section 5. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 6. This act is effective when it becomes law. Section 4 of this act applies to any contribution, primary, or election occurring on or after the date it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, June 04, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **381** N. C. Clean Election Act

| | |
|---|---|
| Draft Number: | PCS 8714 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary Committee — June 3, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Gail Francis | Independent |
| Judith C. Smallwood | |
| Maryann R. Eckel | citizen |
| Bill Harper | self 4625 old cherry Pt. Rd. NB. NC. 28560 |
| Betty Harper | " " " " " " |
| Ray Cheney | citizen / for Responsible Government, Greensboro |
| John Boyd Pro SB 381 | citizen / Zip 27282 |
| Diane Berlin | " 4202 Edgerton Ct High Pt. NC 27265 |
| Samuel Brown | Common Cause Ref. SB381 |
| Liz Self | (Common Cause) / NC |
| Eleon Perry | |
| John Hiatt | citizen Raleigh NC |
| Carmen M. Hiatt | CITIZEN Raleigh |
| Isabelle Powell | citizen for responsible govt Greensboro |
| Ann Clegg | Alliance for Dem Greensboro |
| John Clegg | " " " " |
| Doris Robinson | " " " " Greensboro N.C |
| Dorothy Brown | Alliance for Dem Greensboro N.C |
| Cyrus B. King | " " " Raleigh |
| Edward R. Miller | " " " RALEIGH |
| Edmund T. Klemmer | common cause Raleigh |

R. Paul Wilms

Pete McDowell

Paul Lawler

David M. Olson

NCHEA

Democracy South

Lawler Consulting

Greensboro, NC

UNC Greensboro

VISITOR REGISTRATION SHEET

JUDICIARY COMMITTEE — JUNE 3, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Helen Allegrone | — |
| Joan Walsh, Ph.D. | UNC - Chapel Hill (Cecil B. Steps Center) |
| Jeffery Johnson | |
| Ray D. Moore | Guilford County Democratic party 2nd Vice Chair |
| Steve Ford | N&O News & Observer |
| Tanya McGhee | Common Cause |
| Ralph Bradley | NC Alliance for Democracy |
| Sara Horne | NC Alliance for Democracy |
| Jill Miller | NCATL |
| Marian Dodd | League of Women Voters NC |
| David Simmons | ZDA, PA |
| Henry A. Landsberger | NC Alliance for Democracy |
| Robert Spotts | |
| Lee Mortimer | Center for Voting and Democracy |
| C. Scott Holmes | ACLU |
| Jerome Kohl | NC Alliance 807 Gardner Rd 27607 |
| Dan Dawson | Wilmington, N.C. |
| Chris Fitzsimon | Common Sense Foundation |
| Bettie Freeman | |
| Hal Miller | NCACCT |
| Bob Geary | NC Alliance |
| MYRA THOMPSON | Common Cause |

VISITOR REGISTRATION SHEET

Judiciary Committee — June 3, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Emery P. Dalesio | The Associated Press |
| Joe Sandy | New Bern NC |
| Brenda Doughety | Sprint |
| Leslie Bwacga | NCCBI |
| Gloria H. Blanton | — (self) |
| Jacaulyn Crabb-Murray | UNCG MPA Student |
| Allan Miles | Bandy & Dixon LLP |
| Stephen J Tulloch | — |
| CHRIS LESLIE | UNC GREENSBORO |
| Josh Balber | Democracy South |
| Wm W. Murphy | NC ALLIANCE FOR DEMOCRACY |
| Michael Rubisch | N.C. Consumers Council, Inc. |
| [illegible] | UNC-Greensboro |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JUNE 5 1997

The Senate Judiciary Committee met on Thursday, June 5, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative McMahan to explain **House Bill 597** - AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

Senator Rucho moved to adopt a Proposed Committee Substitute to House Bill 597 for discussion. The motion carried by voice vote.

Senator Rucho moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Ballance was recognized to explain **House Bill 611** - 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 for Representative Hackney, the bill sponsor.

Senator Ballance moved to adopt a Proposed Committee Substitute for House Bill 611 for discussion. The motion carried by voice vote.

Senator Kincaid moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 923** - AN ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 923 for discussion. The motion carried by voice vote.

The following people were recognized to speak on the bill:

Tim Minton, Association of Realtors
Bill Scoggins, N. C. Bar Association
Ralph Knott, Clerks of Court Association
Peter Jennery, representing the Commercial Realtors

After further discussion by the Committee, Senator Rand moved to send the bill to a subcommittee. The motion carried by voice vote.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 5, 1997

| | | |
|---|---|---|
| SB 923 | Comm. Realtor Lien Act | Odom |
| HB 530 | Prof. Corp. Act Amend | Neely |
| HB 597 | Municipal Lease/Venture | McMahan |
| HB 611 | Increase Comp. For Erron. Convic. | Hackney |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 597
Committee Substitute Favorable 4/28/97

Short Title: Municipal Hospital Lease/Venture. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

"**§ 131E-6. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'City,' as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(4) 'Hospital facility' means any ~~type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.~~ one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(4.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as

utilities, parking lots, and garages, but excluding other improvements to land described in subsection (4) of this section and G.S. 131E-16(15).

(5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.

(6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual."

Section 2. G.S. 131E-13 reads as rewritten:

"**§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.**

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical- surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.

(2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.

(3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

(4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

(5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.~~

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of

the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

(1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.

(2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.

(3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.

(4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.

(5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.

(6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.

(7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.

(8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain hospital facilities as required by subsection (a) of this section or as required by G.S. 131E-23(c).

(f) A municipality, public hospital, or hospital authority may permit or consent to the pledge of hospital land or leasehold estates to facilitate the development, construction, and operation of medical office buildings and other health care or hospital facilities. A municipality, public hospital, or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this Chapter."

Section 3. G.S. 131E-16 reads as rewritten:

"**§ 131E-16. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Board of county commissioners' means the legislative body charged with governing the county.

(2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.

(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(15.1) 'Hospital land' means air and ground rights to unimproved real property held either in fee or by lease, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in G.S. 131E-6(4) and subsection (15) of this section.

(16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) 'State' means the State of North Carolina."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H597-CSRV-002
**PROPOSED SENATE COMMITTEE SUBSTITUTE**
House Bill 597
Committee Substitute Favorable 4/28/97

**THIS IS A DRAFT 5-JUN-97 09:15:15**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

Short Title: Municipal Hospital/Lease Venture. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

"**§ 131E-6. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'City,' as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and

'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(4) 'Hospital facility' means any ~~type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.~~ one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and

food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(4.1) 'Hospital land' means air and ground rights to real property held either in fee or by lease by a municipality, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in subsection (4) of this section and G.S. 131E-16(15).

(5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.

(6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual."

Section 2. G.S. 131E-13 reads as rewritten:

"**§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.**

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical- surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or

conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.

(2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.

(3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

(4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

(5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower

shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.~~

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds

then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

(1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.

(2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.

(3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.

(4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.

(5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.

(6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.

(7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.

(8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain its primary community general hospital facilities as required by subsection (a) of this section.

(f) A municipality or hospital authority may permit or consent to the pledge of hospital land or leasehold estates in hospital land to facilitate the development, construction, and operation of medical office buildings and other

health care or hospital facilities. A municipality or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this Chapter."

Section 3. G.S. 131E-16 reads as rewritten:

"**§ 131E-16. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Board of county commissioners' means the legislative body charged with governing the county.

(2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55

of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.

(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus

and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(15.1) 'Hospital land' means air and ground rights to real property held either in fee or by lease by a hospital authority, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in G.S. 131E-6(4) and subsection (15) of this section.

(16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) 'State' means the State of North Carolina."

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 611
Committee Substitute Favorable 4/23/97

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

H611-CSRV-003
**PROPOSED COMMITTEE SUBSTITUTE**
House Bill 611
Committee Substitute Favorable 4/23/97
**THIS IS A DRAFT 5-JUN-97 09:55:36**
**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 a 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.~~ 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 or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony 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 was imprisoned and has been vindicated in connection with the alleged offense for which he or she 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~~ imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award 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)~~ funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of the year of ~~such~~ the imprisonment actually ~~served; and~~ served, but in no event shall ~~such~~ the compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

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

S 1

SENATE BILL 923

Short Title: Commercial Realtor Lien Act. (Public)

Sponsors: Senators Odom; Allran, Carpenter, and Foxx.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 93A is amended by adding a new Article to read:

"ARTICLE 6.

"Commercial Real Estate Brokers' Lien Act.

"**§ 93A-90. Short title.**

This Article may be known as the 'Commercial Real Estate Brokers' Lien Act.'

"**§ 93A-91. Definitions.**

As used in this Article, the following terms mean:

(1) 'Commercial real estate', any real estate other than real estate containing one to four residential units, real estate on which no buildings or structures are located, or real estate classified as agricultural and horticultural property for tax assessment purposes. Commercial real estate does not include single-family residential units including condominiums, townhouses, or homes in a subdivision when that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real estate containing more than four residential units;

(2) 'Owner', the owner of record of commercial real estate;

(3) 'Real estate broker' and 'real estate salesperson', as such terms are defined in G.S. 93A-2.

"**§ 93A-92. Broker's lien for compensation.**

Any licensed real estate broker shall have a lien, upon commercial real estate or any interest in that commercial real estate, in the amount that the real estate broker is due:

(1) Under a written instrument signed by the owner of an interest in the commercial real estate or signed by the owner's duly authorized agent; or

(2) Under a written instrument signed by a prospective buyer or prospective tenants or signed by their duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate.

"**§ 93A-93. Lien notice, content.**

A lien notice, for purposes of this Article, shall state:

(1) The name of the claimant;

(2) The name of the owner;

(3) A description of the property upon which the lien is being claimed;

(4) The amount for which the lien is claimed; and

(5) The real estate license number of the real estate broker.

The notice of lien shall be signed by the real estate broker, and the broker shall attest that the information contained in the notice is true and accurate as to his knowledge and belief.

"**§ 93A-94. When broker's lien attaches to commercial real estate.**

A real estate broker's lien authorized by this Article attaches to the commercial real estate, or an interest in the commercial real estate, when the real estate broker records a notice of the lien in the office of the register of deeds of the county in which the real property, or any interest in the real property is located, if such lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to such real estate broker's lien, except that:

(1) If payment to a real estate broker is due in installments and a portion of the payment is due after the conveyance or transfer of the commercial real estate, any claim for a lien for installment payments due after the transfer or conveyance of the real estate may be recorded any time after the transfer or conveyance of the commercial real estate but shall be recorded before the date on which the payment is due. This lien shall only be effective as a lien against the commercial real estate to the extent moneys are still owed to the transferor by the transferee. A single claim for a lien recorded before the transfer or conveyance of the commercial real estate, claiming all moneys due under an installment payment agreement, is not valid or enforceable to the extent of the payments due after the transfer or conveyance. The lien attaches for purposes of this paragraph when the claim for lien is recorded;

(2) In the case of a lease, the claim for lien shall be recorded within 90 days after the tenant takes possession of the leased property, unless written notice of the intention to sign the lease is personally served on the real estate broker entitled to claim a lien at least 10 days before the date of the intended signing of the lease, then the claim for lien shall be recorded before the date indicated for the signing of the lease. The lien attaches for purposes of this subdivision when the claim for lien is recorded; or

(3) If the real estate broker has a written agreement with a prospective buyer as provided in subdivision (2) of G.S. 93A-92, then the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer of the commercial real estate and records a notice of the lien within 90 days after the purchase or other conveyance or transfer to the buyer in the office of the register of deeds in the county in which the commercial real estate, or any interest in the commercial real estate, is located.

**"§ 93A-95. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the register of deeds and a condition occurs that would preclude the broker from receiving compensation under the terms of the real estate broker's written agreement, the real estate broker shall record and provide the owner of record a written release or satisfaction of the lien.

**"§ 93A-96. Broker to mail copy of notice of lien to owner by certified mail.**

Any real estate broker who attaches a lien on commercial property pursuant to the provisions of this Article shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail. The real estate broker's lien is void if the broker does not record the lien as provided in this Article.

**"§ 93A-97. Enforcing lien.**

A real estate broker may bring suit to enforce a lien which attaches pursuant to the provisions of this Article in any court of competent jurisdiction in the county where the property is located by filing a verified petition that the lien has been recorded. Unless the claim is based upon an option to purchase the commercial real estate, the broker claiming the lien shall commence proceedings within six months after recording the lien and failure to commence proceedings within the six months shall extinguish the lien. A claim for the same lien, extinguished pursuant to this section and G.S. 93A-99, may not be asserted in any subsequent proceeding.

**"§ 93A-98. Petition, content, parties' foreclosure action, procedure.**

(a) A petition filed pursuant to the provisions of this section and G.S. 93A-97 shall contain:

(1) A statement of the terms of the contract or agreement on which the lien is based;

(2) The date when the contract or agreement was made;

(3) A description of the services performed;

(4) The amount due and unpaid;

(5) A description of the property that is subject to the lien; and

(6) Any other facts necessary for a full understanding of the rights of the parties.

The plaintiff shall file the action against all known parties who have an interest in the real estate. A foreclosure action for a lien claimed pursuant to this Article shall be brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

(b) Valid prior recorded liens or mortgages shall have priority over a real estate broker's lien.

**"§ 93A-99. Lien extinguished for broker failing to file suit or answer in pending suit within 30 days after service on owner.**

If a broker claiming a lien pursuant to this Article fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The provisions of this section shall not extend any other deadline provided by law or the filing of any pleadings or for the foreclosure of any lien governed by this Article.

**"§ 93A-100. Satisfaction or release of lien.**

If a claim for lien has been filed pursuant to the provisions of this Article with the register of deeds and the claim has been paid in full or if the lienor fails to institute a suit to enforce the lien within the time as provided by law, the real estate broker shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

**"§ 93A-101. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

**"§ 93A-102. Escrow account.**

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a claim for a real estate broker's lien has been filed with the register of deeds and that lien would prevent the closing of a transaction or conveyance, an escrow account shall be established with the clerk of the superior court in the county in which the commercial real estate is located from the proceeds of the transaction or conveyance in an amount sufficient to release the claim for the lien. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to close a transaction. The proceeds held in that escrow account shall be held by the clerk until the parties' rights to the escrowed funds have been determined by:

(1) Written agreement of the parties;

(2) A final judgment of the court of competent jurisdiction; or

(3) Other process as may be agreed to by the parties.

If funds sufficient to satisfy the amount claimed in the lien have been deposited in the escrow account, the real estate broker shall release the claim for the lien on the real estate.

**"§ 93A-103. Broker to give written notice of right to lien on premises at time of closing.**

Any real estate broker who proposes to assert a lien pursuant to this Article shall be prohibited from asserting the lien unless, at the time of the closing for the transaction, the broker has given written notice to the purchaser of the commercial real estate that payment of the broker's fee is due and that he or she is entitled to a lien on the premises."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S923-CSRU-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 923
THIS IS A DRAFT 5-JUN-97 09:46:03
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Commercial Realtor Lien Act. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 44A is amended by adding a new Article to read:

"ARTICLE 5.

"Commercial Real Estate Brokers' Lien Act.

"**§ 44A-50. Short title.**

This Article may be known as the 'Commercial Real Estate Brokers' Lien Act.

"**§ 44A-51. Definitions.**

As used in this Article, the following terms mean:

(1) 'Commercial real property'. -- Any real estate other than real estate containing one to four residential units, real estate on which no buildings or structures are located, or real estate classified as agricultural and horticultural property for tax assessment purposes. Commercial real property does not include single-family residential units including condominiums,

townhouses, or homes in a subdivision when that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real estate containing more than four residential units.

(2) 'Owner'. -- The owner of record of commercial real property.

(3) 'Real estate broker'. -- As defined in G.S. 93A-2.

**"§ 44A-52. Broker's lien/filing lien for compensation by written contract with owner.**

A real estate broker may file a claim of lien, upon commercial real property or any interest in that commercial real property, in the amount that the real estate broker is due under a written contract signed by the owner of an interest in the commercial real property or signed by the owner's duly authorized agent. The claim of lien must be filed in the office of the clerk of superior court in each county wherein the commercial real property subject to the claim of lien is located. The clerk of superior court shall note the claim of lien on the judgment docket and index the same under the name of the record owner of commercial real property at the time the claim of lien is filed. An additional copy of the claim of lien may also be filed with any receiver, referee in bankruptcy, or assignee for benefit of creditors who obtains legal authority over the commercial real property. The filing fee shall be as established by G.S. 7A-308. The claim of lien shall be filed prior to the recording of the deed conveying the commercial real property subject to such real estate broker's lien.

**"§ 44A-53. Broker's lien/filing for compensation by written contract with buyer or tenant.**

A real estate broker may record a claim of lien, upon commercial real property or any interest in that commercial real property, in the amount that the real estate broker is due under a written contract signed by a prospective buyer or prospective tenants or signed by their duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real property. The real estate broker shall file the claim of lien in accordance with G.S. 44A-52 except that the claim of lien shall be filed within 30 days after the recording of the deed conveying the commercial real property subject to such real estate broker's lien, and in the case of a lease, within 30 days after the tenant takes possession of the leased premises.

If the prospective buyer who contracted with the real estate broker obtains ownership of the commercial real property and thereafter conveys ownership of the commercial property to a third-party before the real estate broker's claim of lien is filed, the right to claim a lien terminates.

"**§ 44A-54. Claim of lien, content.**

(a) Contents of Claim of Lien to Be Filed. -- All claims of lien must be filed using a form substantially as follows:

(1) Name and address of the person claiming the lien and the real estate broker's real estate license number.

(2) Name and address of the record owner of the commercial real property claimed to be subject to the lien at the time the claim of lien is filed.

(3) Description of the commercial real property upon which the lien is claimed. (Street address, tax lot and block number, reference to recorded instrument, or any other description of commercial real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)

(4) Name and address of the person with whom the claimant contracted.

(5) In the case of a lease, the name and address of the tenant and the date when tenant took possession of the commercial real property.

(6) The amount claimed.

(b) No Amendment of Claim of Lien. -- A claim of lien may not be amended. A claim of lien may be cancelled by a claimant or his authorized agent or attorney, and a new claim of lien substituted therefor within the time herein provided for original filing.

(c) Notice of Assignment of Claim of Lien. -- When a claim of lien has been filed, it may be assigned of record by the lien claimant in a writing filed with the clerk of superior court who shall note said assignment in the margin of the judgment docket containing the claim of lien. Thereafter the assignee becomes the lien claimant of record.

(d) Nothing herein shall prohibit subordination or release of a lien granted under this Article.

"**§ 44A-55. When real estate broker's lien attaches to commercial real property.**

A real estate broker's lien authorized by this Article attaches to the commercial real property, or an interest in the commercial

real property, when the real estate broker files the claim of lien in the office of the clerk of superior court of the county in which the commercial real property, or any interest in the commercial real property, is located. The lien shall attach as of the filing of the claim of lien and does not relate back to the written contract.

**"§ 44A-56. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the clerk of superior court and a condition occurs that would preclude the broker from receiving compensation under the terms of the real estate broker's written agreement, the real estate broker shall record and provide the owner of record a written release or satisfaction of the lien.

**"§ 44A-57. Broker to give copy of notice of lien.**

Any real estate broker who files a claim of lien on commercial real property pursuant to the provisions of this Article shall mail a copy of the notice of the lien to the owner of the commercial real property and, in the case of a lease, to the tenant by certified mail within 10 days of the filing of the claim of lien.

**"§ 44A-58. Enforcing lien.**

(a) Where and When Action Instituted. -- An action to enforce the lien created by this Article may be instituted in any county in which the lien if filed. No such action may be commenced later than 180 days after the filing of the claim of lien. If the title of the commercial real property against which the lien is asserted is by law vested in a receiver or trustee in bankruptcy, the lien shall be enforced in accordance with the orders of the court having jurisdiction over said commercial real property.

(b) Judgment. -- Judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the commercial real property subject to the lien thereby enforced.

(c) Notice of Action. -- Unless the action enforcing the lien created by this Article is instituted in the county in which the lien is filed, in order for the sale under the provisions of G.S. 44A-59(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the filing of the claim of lien by the person claiming the lien, a notice of lis pendens shall be filed in each county in which the commercial real property subject to the lien is located within 180 days after the filing of the claim of lien

by the person claiming the lien. If neither an action nor a notice of lis pendens is filed in each county in which the commercial real property subject to the lien is located within 180 days after the filing of the claim of lien by the person claiming the lien, as to commercial real property claimed to be subject to the lien in such counties where the action was neither commenced nor a notice of lis pendens filed, the judgment entered in the action enforcing the lien shall not direct a sale of the commercial real property subject to the lien enforced thereby and shall be entitled only to those priorities accorded by law to money judgments.

**"§ 44A-59. Sale of commercial real property in satisfaction of judgment enforcing lien or upon order prior to judgment; distribution of proceeds.**

(a) Execution Sale; Effect of Sale. -- Except as provided in subsection (b) of this section, sales under this Article and distribution of proceeds thereof shall be made in accordance with the execution sale provisions set out in G.S. 1-339.41 through 1-339.76. The sale of commercial real property to satisfy a lien granted by this Article shall pass all title and interest of the owner to the purchaser, good against all claims or interests recorded, filed or arising after the filing of the claim of lien by the person claiming a lien.

(b) Sale of Property Upon Order Prior to Judgment. -- A resident judge of superior court in the district in which the action to enforce the lien is pending, a judge regularly holding the superior courts of the said district, any judge holding a session of superior court, either civil or criminal, in the said district, a special judge of superior court residing in the said district, or the chief judge of the district court in which the action to enforce the lien is pending, may, upon notice to all interested parties and after a hearing thereupon and upon a finding that a sale prior to judgment is necessary to prevent substantial waste, destruction, depreciation, or other damage to said commercial real property prior to the final determination of said action, order any commercial real property against which a lien under this Article is asserted, sold in any manner determined by said judge to be commercially reasonable. The rights of all parties shall be transferred to the proceeds of the sale. Application for such order and further proceedings thereon may be heard in or out of session.

**"§ 44A-60. Attachment available to lien claimant.**

In addition to other grounds for attachment, in all cases where the owner removes or attempts or threatens to remove an

improvement from commercial real property subject to a lien under this Article, without the written permission of the lien claimant or with the intent to deprive the lien claimant of his lien, the remedy of attachment of the property subject to the lien shall be available to the lien claimant or any other person.

"**§ 44A-61. Discharge of record lien.**

Any lien filed under this Article may be discharged by any of the following methods:

(1) The lien claimant of record, his agent or attorney, in the presence of the clerk of superior court may acknowledge the satisfaction of the lien indebtedness, whereupon the clerk of superior court shall forthwith make upon the record of such lien an entry of such acknowledgment of satisfaction, which shall be signed by the lien claimant of record, his agent or attorney, and witnessed by the clerk of superior court.

(2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record which instrument states that the lien indebtedness has been paid or satisfied, whereupon the clerk of superior court shall cancel the lien by entry of satisfaction on the record of such lien.

(3) By failure to enforce the lien within the time prescribed in this Article.

(4) By filing in the office of the clerk of superior court the original or certified copy of judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the lien has been dismissed or finally determined adversely to the claimant.

(5) Whenever a sum equal to the amount of the lien or liens claimed is deposited with the clerk of court to be applied to the payment finally determined to be due, whereupon the clerk of superior court shall cancel the lien or liens of record.

(6) Whenever a corporate surety bond, in a sum equal to one and one-fourth times the amount of the lien or liens claimed and conditioned upon the payment of the amount finally determined to be due in satisfaction of said lien or liens, is deposited with the clerk of court, whereupon the clerk of

superior court shall cancel the lien or liens of record.

Section 2. This act becomes effective December 1, 1997 and applies to claims arising from contracts entered into on or after that date.

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June 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 923 - COMMERCIAL REALTOR LIEN ACT** - Senator Odom

Senate Bill 923 would create a right and procedure for a real estate broker to have a lien against real estate for the amount of commission owed to the realtor arising out of a contract involving commercial real estate.

The bill creates a new Article 5 to Chapter 44A -**Statutory Liens and Charges** which provides for the right of a realtor in a commercial real estate situation to file a lien against the real estate involved in a written contract for the amount of the real estate commission owed to the realtor. Excluded from the definition of "commercial real estate" is any single-family residential units, including property in a subdivision when sold on a unit-by-unit basis.

The bill provides the realtor with a right to a lien against the property or property interest of the person who contracted to pay the commission, whether that be the seller, the buyer, or the tenant of the property. Although many of the provisions in this bill are similar to the other statutory lien law under Chapter 44A, under this bill, the commercial realtor's lien only arises if the claim of lien is filed prior to the property being conveyed to a third-party, and only relates back to the time the claim of lien is filed, not the date of the original contract.

Under the bill the claim of lien must be filed before the seller conveys the property (if the seller owes the commission), or within 30 days of when the buyer or lessee acquires the property but before the buyer or lessee reconveys the property (if the buyer or lessee owes the commission). Suit to enforce the lien must be filed within 180 days after the filing of the lien. Once a judgment is entered enforcing the lien, the court shall order the real estate sold to satisfy the lien. The bill also provides for methods for canceling the lien similar to canceling other statutory liens.

The bill becomes effective December 1, 1997 and applies to claims arising from contracts entered into on or after that date.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, June 09, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **597** Municipal Hospital Lease/Venture

| | |
|---|---|
| Draft Number: | PCS 8252 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

H.B.(CS #1) **611** Increase Compensation for Erroneous Conviction

| | |
|---|---|
| Draft Number: | PCS 1396 |
| Sequential Referral: | Appropriations |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

"Judiciary" 6-5-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| David Anders | PFFRC |
| John May | NC CWA |
| V L McBride | NCFB |
| Richard A. Trantmann | NC Horse Council |
| Marie Rhodes | " " " |
| [illegible] | NCAR |
| Alan Miles | Bailey & Dixon LLP |
| PERRI MORGAN | NFIB |
| David Simmons | NRA, ORI |
| BILL SIGGIN | NCBA |
| [illegible] | NCBA |
| PT Chenery | NCAR |
| James P Mattey | NCAR |
| [illegible] | NCAR |
| PB Powell | AOC |
| Steve Keene | NCWS |
| Dave Schaffer | CAROLINAS AGC |
| [illegible] | CSC |
| Mike Carnette | NCFBJ |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JUNE 10, 1997

The Senate Judiciary Committee met on Tuesday, June 10, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and announced that he was appointing a subcommittee to take up House Bill 523. The members are Senators Reeves, Chairman, Kincaid and Odom.

Representative Neely was recognized to explain **House Bill 530** - AN ACT TO EXEMPT CERTAIN CORPORATIONS WHICH OFFER ENGINEERING, LANDSCAPE, ARCHITECTURAL, AND GEOLOGICAL SERVICES FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

Senator Ballance moved to adopt a Proposed Committee Substitute for House Bill 530 for discussion. The motion was carried by voice vote.

Henry Jones, representing Electrical, Plumbing and Heating/Air Conditioning Contractors, was recognized to speak on the Proposed Committee Substitute.

Senator Kincaid moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Daughtry was recognized to explain **House Bill 646** - AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO ESTABLISH A PRODUCTION MONEY SECURITY INTEREST IN CROPS THAT HAS PRIORITY OVER OTHER SECURITY INTERESTS.

Senator Carpenter moved to give the bill a favorable report. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 221** - 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.

Pete Powell, with the Administrative Office of the Courts, was recognized to speak on the bill.

Senator Rucho moved to give the bill a favorable report. The motion carried by voice vote.

Representative Bowie was recognized to explain **House Bill 195** - AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MAKE CLARIFYING CHANGES TO POST-RELEASE SUPERVISION.

Senator Lee moved to give the bill a favorable report. The motion carried by voice vote.

Representative Hackney was recognized to explain **House Bill 533** - 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.

Senator Soles moved to amend the bill on Page 7, Line 8 by deleting the word "date". The motion carried by voice vote.

Senator Carpenter moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Representative Hackney was recognized to explain **House Bill 535** - 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.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
## June 10, 1997

| | | |
|---|---|---|
| HB 195 | Clarify Post-Release Supervision | Bowie |
| HB 221 | Initial Appearance by Video | Culpepper |
| HB 530 | Prof. Corp. Act Amendments | Neely |
| HB 533 | Equit. Dist./Divisible Property | Hackney |
| HB 535 | Equit. Dist./Retirement Rts. | Hackney |
| HB 646 | Revise UCC/Crop Liens | Daughtry |

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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June 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 530 - PROFESSIONAL CORPORATION ACT AMENDMENT - ENGINEERS -** Representative Neely.

The Proposed Senate Committee Substitute for House Bill 530 amends the Professional Corporation Act, as it relates to licensed engineers, to permit certain design services to be performed by certain contracting companies that do not meet the standards for being a professional corporation.

The bill amends G.S. 55B-15 to exempt corporations from the Professional Corporation Act which render engineering services in conjunction with services authorized under Articles 1 (general contracting), 2 (mechanical, plumbing and fire sprinkler contracting), 4 (electrical contracting), or 5 (refrigeration contracting) of Chapter 87. The Professional Corporation Act does not allow these firms to offer engineering services unless they are organized as professional corporations. A firm can only organize as a professional engineering corporation if at least two-thirds of the stock is owned by a licensed engineer. However, many contracting firms fail to meet this stock requirement.

The bill would allow these firms to offer professional engineering services without meeting this requirement. The engineering services must be reasonably necessary and in connection with the primary services performed by the company in the normal course of its business. The bill prohibits the professional services from being performed independently from the primary company service The bill makes it clear that anyone performing professional engineering services must be licensed as an engineer and nothing in this provision changes the professional relationship and liability of the engineer to the customer or the professional standards applicable to the work performed.

The bill is effective when it becomes law.

H530-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 530
Committee Substitute Favorable 4/24/97
Proposed Senate Committee Substitute H530-PCS1395

Short Title: Professional Corp. Act Amendment. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN CORPORATIONS WHICH OFFER ENGINEERING 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 authorized in this State to render primary services governed by Articles 1, 2, 4, or 5 of Chapter 87 of the General Statutes, if the corporation renders services as defined in Chapter 89C of the General Statutes, that are reasonably necessary and connected with the primary services performed by individuals

regularly employed in the ordinary course of business by the corporation. The professional 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 must be provided by individuals regularly employed in the ordinary course of business by the corporation and duly licensed to render these professional services in this State. Nothing in this subdivision shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between licensees furnishing the professional service and the person receiving the professional service, or the standards of professional conduct applicable to the rendering of the professional service.

(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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June 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Steve Rose, House Judiciary I Co-Counsel

**RE:** **HOUSE BILL 646 - REVISE UNIFORM COMMERCIAL CODE - CROP LIENS** - Representative Daughtry

House Bill 646 amends the UCC to permit a security interest in growing crops for agricultural supplies used to grow the crops, and provides that this security interest would have priority over other certain other perfected security interests in the crops.

In the current law, subdivision (2) of G.S. 25-9-312 provides that a perfected security interest in crops for new value given to enable the debtor to produce crops during a production season takes precedence over an earlier security interest provided that (i) the new security interest is given not more than three months before the crops become growing crops, and (ii) the earlier security interest secures obligations due more than six months before the crops become growing crops.

This bill amends this statute to provide that a new security interest for the purpose of allowing the debtor to purchase agricultural supplies to produce crops will take precedence over any perfected security interest in those crops. The amendments require that within five days of perfecting the new security interest in crops the holder must notify in writing the holder of any conflicting security interest. The notice must identify the debtor, describe the types of crops, state the year or years in which the crops will be growing, and describe the land where the crops are growing or to be grown. The amendments specifically provide that creating or perfecting a new security interest in crops to allow the purchase of agricultural supplies shall not operate as a default or an act of acceleration pursuant to any existing instrument. The bill defines agricultural supplies to include seeds, soil additives, fertilizer, lime, pesticides, and herbicides.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The bill becomes effective October 1, 1997 and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date. In other words, preexisting security interests and contracts will not be affected by the amendments.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# HOUSE BILL 646

Short Title: Revise UCC/Crop Liens. (Public)

Sponsors: Representative Daughtry.

Referred to: Judiciary I.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO ESTABLISH A PRODUCTION MONEY SECURITY INTEREST IN CROPS THAT HAS PRIORITY OVER OTHER SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-312 reads as rewritten:

"**§ 25-9-312. Priorities among conflicting security interests in the same collateral.**

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

(2) (a) A perfected security interest in crops for new value given to enable the debtor to purchase agricultural supplies to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over ~~an earlier~~ any perfected security interest in those crops, ~~to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise,~~ even though the person giving new value had knowledge of the earlier security interest. Priority of security interests in crops for new value given to enable the debtor to purchase agricultural supplies not more

than three months before the crops became growing crops is governed by subdivision (5) of this section.

(b) Within five days of perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies, the holder of the security interest shall notify in writing by certified mail, addressee only, the holder of the conflicting security interest that the person giving the notice has or expects to acquire a security interest in the crops of the debtor. The notice shall identify the debtor, describe the type of crops, state the year or years in which the crops will be grown, and describe the land where the crops are growing or to be grown.

(c) Creating or perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security arrangement of any kind or nature where the collateral is real or personal property.

(d) As used in this subdivision, 'agricultural supplies' includes agricultural seeds as defined in G.S. 106-277.2, soil additives as defined in G.S. 106-50.31, fertilizer materials as defined in G.S. 106-657, liming materials as defined in G.S. 106-92.3, pesticides as defined in G.S. 106-65.24, and herbicides as defined in G.S. 143-460.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) ~~the~~ The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) ~~the~~ The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and

(c) ~~the~~ The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) ~~the~~ The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 2. This act becomes effective October 1, 1997, and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date.

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June 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 221 - INITIAL APPEARANCE BY VIDEO**
Representative Culpepper

In 1993, the General Assembly enacted legislation authorizing a judicial official to conduct a pretrial release proceeding, first appearance, or arraignment by two-way audio and video transmission. (See attached statutes) This change has reportedly eliminated in some counties the often risky transportation of inmates from satellite jail facilities to the courthouse.

House Bill 221 extends the use of two-way audio and video proceedings for initial appearances before a magistrate. In districts with a limited number of magistrates or satellite jail facilities, this change is expected to allow for a more efficient use of a magistrate's time and reduce the transportation of inmates. The legislation requires the approval of the Administrative Office of the Courts before a district may implement such a system.

The act would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**§ 15A-532. Persons authorized to determine conditions for release; use of two-way audio and video transmission.**

(a) Judicial officials may determine conditions for release of persons brought before them or as provided in subsection (b) of this section, in accordance with this Article.

(b) Any proceeding under this Article to determine, modify, or revoke conditions of pretrial release in a noncapital case may be conducted by an audio and video transmission between the 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. Upon motion of the defendant, the court may not use an audio and video transmission.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) 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 for a judicial district or set of districts and approved by the Administrative Office of the Courts.

**§ 15A-941. Arraignment before judge only upon written request; use of two-way audio and video transmission; entry of not guilty plea if not arraigned.**

(a) Arraignment consists of bringing a defendant in open court or as provided in subsection (b) of this section before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The prosecutor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

(b) An arraignment in a noncapital case may be conducted by an audio and video transmission between the judge 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.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) 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 for the judicial district or set of districts and approved by the Administrative Office of the Courts.

(d) A defendant will be arraigned in accordance with this section only if the defendant files a written request with the clerk of superior court for an arraignment not later than 21 days after service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant.

(e) Nothing in this section shall prevent the district attorney from calendaring cases for administrative purposes.

**§ 15A-601. First appearance before a district court judge; right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court; use of two-way audio and video transmission.**

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

(a1) A first appearance in a noncapital case may be conducted by an audio and video transmission between the judge 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 for a judicial district or set of districts and approved by the Administrative Office of the Courts.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, he may consolidate those proceedings and the proceedings under this Article.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within 96 hours after being taken into custody, first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

(d) Upon motion of the defendant, the first appearance before a district court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a district court judge but he need not appear personally if he is represented by counsel at the proceeding.

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 96 hours after the defendant is taken into custody. The clerk, in conducting a first appearance, shall proceed under this Article as would a district court judge.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 221

Short Title: Initial Appearance by Video. (Public)

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

Referred to: Judiciary II.

February 17, 1997

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.

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June 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 195 - CLARIFY POST RELEASE SUPERVISION**
Representative Bowie

House Bill 195 is a recommendation of the N.C. Sentencing and Policy Advisory Commission. The bill makes several clarifying changes to post-release supervision. Post-release supervision is the time for which a sentenced prisoner is released from prison before the termination of his maximum prison term. Under current law, offenders convicted of Class B1 through Class E felonies are released from prison nine months before the expiration of their maximum sentence, less earned time credits, and are placed on post-release supervision for nine months (five years for sex offenders). The purposes of post-release supervision, as articulated in the statutes, are to monitor and control the prisoner in the community, to assist the prisoner in reintegrating into society, to collect restitution and other court indebtedness from the prisoner, and to continue the prisoner's treatment or education. An offender violating the conditions of post-release supervision can be returned to prison for up to the maximum sentence. ***A copy of the fiscal note for House Bill 195 is attached; the note indicates no fiscal impact.***

**Section 1** amends G.S.15A-1368.6(e), regarding revocation hearings for violation of conditions of post-release supervision. Section 1 clarifies 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 the definition of "maximum imposed term" in 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, which sets out conditions of post-release supervision. 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 discretionary conditions are appropriate for a supervisee under post-release supervision. Subsection (e), which sets out controlling conditions of post-release supervision, is amended by adding two new conditions which may be imposed on a supervisee under post-release supervision. Subsection (e)(13) provides that the supervisee may 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) provides that the supervisee may be required to submit to supervision by the Intensive Post-Release Supervision Program. Violations of these or other controlling conditions may result in the revocation of the post-release supervision.

**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 the act effective December 1, 1997 and applicable to offenses committed on or after that date.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 195 (First Edition)

**SHORT TITLE:** Clarify Post-Release Supervision

**SPONSOR(S):** Bowie

### FISCAL IMPACT

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

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **REVENUES** | | | No Fiscal Impact | | |
| **EXPENDITURES** | | | | | |
| **POSITIONS:** | | | | | |

**PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:**

**EFFECTIVE DATE:** December 1, 1997

**BILL SUMMARY:** **H 195. CLARIFY POST-RELEASE SUPERVISION.** *TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MAKE CLARIFYING CHANGES TO POST-RELEASE SUPERVISION.* Amends GS 15A-1368.6(e) to provide that the 45-day limit for holding a hearing concerning revocation of supervised release begins (a) when the preliminary hearing required by subsection (b) is held or waived, or (b) seven working days after arrest, whichever is sooner. Amends GS 15A-1368.4(e) to add, as authorized controlling conditions the violation of which may result in revocation of supervised release, (1) that the releasee remain in a specified place and wear a device allowing compliance to be monitored electronically; and (2) that the releasee submit to intensive post-release supervision under GS 143B-262(c). Repeals GS 15A-1368.2(e), which allows Post-Release Supervision and Parole Comm'n to choose level of supervision for a releasee, including electronic monitoring, intensive supervision, or regular supervision, but does not specify that electronic monitoring and intensive supervision are controlling conditions. [1]

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[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol 1997, No. 11

**ASSUMPTIONS AND METHODOLOGY**: This bill makes primarily clarifying or conforming changes to existing statutes concerning revocation hearings and credits towards maximum terms of sentence. These changes should have no impact on the time an offender is incarcerated or on post release supervision. The bill also requires the Parole and Post-Release Supervision Commission to consult with the Division of Adult Probation and Parole on setting conditions of supervision. There is no reason to anticipate this provision would affect the kind or level of supervision ordered for offenders. Finally, the bill includes electronic monitoring and intensive supervision as "controlling" conditions rather than as levels of supervision ordered by the Commission. This last change primarily conforms statute language to current practice. Since offenders are infrequently returned to prison for technical violations, there is no fiscal impact of this provision.

HB 195 also specifies that the 45 day limit for holding a revocation hearing begins after a preliminary hearing or 7 working days after arrest, whichever is sooner. Currently, the count of 45 days begins when the offender is returned to Central Prison. If offenders are still held in county jails at the point the 45 day limit is exhausted and if Department of Correction is unable to transport the offender, a Commissioner would have to travel to hold the hearing where the offender is held. Since revocation hearings will be relatively infrequent (with a supervised parole population of 15,455 in 1995-6, only 173 hearings were held or 1.1%) this cost could be absorbed within existing resources.

The Sentencing Commission has projected no impact on the number of incarcerated offenders and the Judicial Branch has projected no substantial impact on their resources.

**TECHNICAL CONSIDERATIONS**: None

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY**: Elisa Wolper
**APPROVED BY**: Tom Covington **TomC**
**DATE**: March 3, 1997

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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June 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, House Judiciary II Co-Counsel

**RE:** **HOUSE BILL 533 - EQUITABLE DISTRIBUTION/DIVISIBLE PROPERTY -** Representative Hackney

House Bill 533 would amend the law of equitable distribution of marital property upon divorce by providing for the distribution of "divisible property" which includes certain property arising from marital assets or actions during the marriage which are realized after separation but before distribution. This bill 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 that includes the appreciation and diminution in value of marital property and other divisible property acquired after the date of separation and prior to the date of distribution, property received after separation but before distribution acquired as a result of actions of the parties during the marriage but before separation, passive income from marital property received after separation, and increases in marital debt including finance charges and interest related to marital debt.

Section 1 also creates a presumption that an in kind distribution of marital or divisible property is equitable, but allows this presumption to 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.

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 marital property. The bill provides that evidence of preseparation and postseparation value is competent as corroborative evidence of the value of martial property as of the date of separation. Divisible property and divisible debt is valued as of the date of distribution.

The bill becomes effective October 1, 1997. The changes to G.S. 50-20(i1), which would encourage interim distribution of marital property, would apply to motions filed on or after that date, and the remainder of the bill would be applicable to actions for equitable distribution filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 533
Committee Substitute Favorable 4/10/97

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 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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 533 DATE 6-10-97

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

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) SOLES

moves to amend the bill on page 7, line 8

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "DATE." AND SUBSTITUTING THE WORDS "DATE, BUT SHALL APPLY TO DIVISIBLE PROPERTY OR DIVISIBLE DEBT ONLY IN ACTIONS FOR EQUITABLE DISTRIBUTION FILED ON OR AFTER OCTOBER 1, 1997."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

# North Carolina General Assembly
# Legislative Services Office

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June 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, House Judiciary II Committee Co-Counsel

**RE:** **HOUSE BILL 535 - EQUITABLE DISTRIBUTION/RETIREMENT -** Representative Hackney.

House Bill 535 would amend the law involving the equitable distribution of marital property by providing that nonvested pension, retirement and other deferred compensation benefits acquired during marriage are considered marital property and are subject to consideration for division under equitable distribution. The bill is a recommendation of the Family Law Section of the North Carolina Bar Association.

House Bill 535 rewrites the distributive award provision of the equitable distribution law related to pensions, retirement and other deferred compensation by adding a new section as G.S. 50-20.1. This new section copies the existing law for the distribution of vested pension, retirement and other deferred compensation and adds nonvested pension, retirement, and other deferred compensation rights as marital property for the purposes of equitable distribution. The bill authorizes the award of nonvested pension and retirement benefits in the same ways as permitted for vested funds: (1) in lump sum payments; (2) payments over a period of time; or (3) as a prorated portion of the benefits at the time the benefits are received, but does not permit awarding a larger portion of other assets in compensation for the nonvested funds, as is permitted for vested funds.

As is the current law, 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 535
Committee Substitute Favorable 4/10/97

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.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, June 10, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **195** Clarify Post-Release Supervision
Sequential Referral: None
Recommended Referral: None

H.B. **221** Initial Appearance by Video
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **535** Equitable Distribution/Retirement Rights
Sequential Referral: None
Recommended Referral: None

H.B. **646** Revise UCC/Crop Liens
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **530** Professional Corp. Act Amendment
Draft Number: PCS 1395
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary Committee — 6-10-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| [illegible] | AOC |
| Tracey Herring | Parole Commission |
| ERIC ZOGRY | NC SENTENCING COMMISSION |
| John Madler | Sentencing Commission |
| Tim Kent | American Institute of Architects |
| Paul B. Hoobson | Professional Engineers of NC |
| DAN DAWSON | PROFESSIONAL ENGINEERS OF NC |
| JERRY CARTER | NC State Bd. of Registration |
| Richard Z. O'Brien | PFFNC |
| [illegible] | Lobbyist (Pl. State) |
| Myra Hall | NASW-NC |
| Rob Schofield | NCJCDC |
| Chris Sosa | NC AFL-CIO |
| Chris Kanagucki | NCADH |
| Jim Ritchey | Triangle Transit Authority |
| Hal Miller | NCACCT |
| Leonard Allen | SOS |
| Leon Kitchin | M-V A |
| DONNY HUNTER | NCCCS |
| Mac Barlow | ATTY |
| Brad Adcock | BCBSNC |
| LYMAN Cooper | CSX CORP. |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Valerie J Kennedy | Hoffmann-La Roche, Inc. |
| [illegible] | Dollar-Rent-A-Car - |
| [illegible] | [illegible] |
| Jimmy Hall | Carolina Health Care Systems |
| Stacey Parker | Intern - Sen Odom |
| Stuart Dixon | N.C. Natural Gas Corp |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| [illegible] | [illegible] |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JUNE 12, 1997

The Senate Judiciary Committee met on Thursday, June 12, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Gulley to explain **House Bill 433** - AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN ONE YEAR OF RETIREMENT.

Senator Soles moved to adopt a Proposed Committee Substitute to House Bill 433 for discussion. The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Albertson was recognized to explain **Senate Bill 360** - AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO ISSUE CERTIFICATES OF BOAT NUMBER AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

Senator Albertson moved to adopt a Proposed Committee Substitute for Senate Bill 360 for discussion. The motion carried by voice vote.

Richard Hamilton, Assistant Director of the Wildlife Resources Commission, was recognized to speak on the Proposed Committee Substitute.

Senator Lee moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Finance Committee. The motion carried by voice vote.

Senator Odom was recognized to explain **House Bill 221** - 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 for Representative Culpepper, the bill sponsor.

Senator Miller moved to reconsider the vote to give House Bill 221 a favorable report at the June 10th meeting. The motion carried by voice vote.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 221 for discussion. The motion carried by voice vote.

Pete Powell, with the Administrative Office of the Courts, was recognized to speak on the Proposed Committee Substitute.

Senator Forrester moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 12, 1997

| | | |
|---|---|---|
| SB 360 | Boat Number Fees | Albertson |
| HB 221 | Initial Appearance by Video | Culpepper |
| HB 433 | Concealed Handgun | Gulley |
| HB 810 | Nash Room Tax | Tolson |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



HOUSE BILL 433*

Short Title: Concealed Handgun Exemption. (Public)

Sponsors: Representatives Gulley; Alexander, Cunningham, Davis, Decker, Dickson, Hardy, McMahan, Morris, Rayfield, Saunders, Sexton, Starnes, and C. Wilson.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN ONE YEAR OF RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.12A. Firearms safety and training course exemption for qualified sworn law enforcement officers.**

A person who is a qualified sworn law enforcement officer or a qualified former sworn law enforcement officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course.

Section 2. G.S. 14-415.10 is amended by adding the following subdivisions:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a local or State agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer

a year or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local or State agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the agency as a law enforcement officer.

c. The individual is not prohibited by State or federal law from receiving a firearm.

(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a local or State agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 3. G.S. 14-415.14(a) reads as rewritten:

"(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, law enforcement status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit."

Section 4. This act becomes effective December 1, 1997.

**North Carolina General Assembly**
**Legislative Services Office**

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June 12, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 433 - CONCEALED HANDGUN EXEMPTION** - Representative Gulley.

The Proposed Senate Committee Substitute for House Bill 433 would exempt certain current and recently retired law enforcement officers from the training requirement in order to be eligible for a conceal handgun permit.

Section 1 of the bill adds a new section to the Concealed Handgun law to exempt qualified sworn law enforcement officers and qualified former sworn law enforcement officers from having to take and successfully complete an approved firearms safety and training course that involves actual firing of handguns and instruction in the laws of North Carolina governing the carrying of a concealed handgun and the use of deadly force.

Section 2 adds two new definitions for "qualified former sworn law enforcement officer" and "qualified sworn law enforcement officer". **A qualified former officer** is a person who has retired from a North Carolina State or local law enforcement agency for reasons other than mental disability, who has been retired two years or less and who immediately before retirement was a qualified law enforcement officer in NC, has nonforfeitable rights to benefits as a retired law enforcement officer, and who is not prohibited by State or federal law from receiving a firearm. **A qualified current officer** is one would is currently employed by a local or State law enforcement agency who is authorized to carry a handgun while on duty, is not subject to disciplinary action which could prevent the carrying of a handgun, and who meets the requirements of the agency regarding handguns.

Section 3 adds a provision to the permit form statute to require information on the law enforcement status of the applicant for a concealed handgun permit.

The bill becomes effective December 1, 1997.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H433-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 433
THIS IS A DRAFT 11-JUN-97 18:35:08
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Concealed Handgun Exemption. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN TWO YEARS OF RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-415.12A. Firearms safety and training course exemption for qualified sworn law enforcement officers.

A person who is a qualified sworn law enforcement officer or a qualified former sworn law enforcement officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course.

Section 2. G.S. 14-415.10 is amended by adding the following subdivisions:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a local or State agency in North Carolina, other than for reasons of mental

disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local or State agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the agency as a law enforcement officer.

c. The individual is not prohibited by State or federal law from receiving a firearm.

(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a local or State agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 3. G.S. 14-415.14(a) reads as rewritten:

"(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, law enforcement status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit."

Section 4. This act becomes effective December 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Friday, June 13, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **433** Concealed Handgun Exemption

| | |
|---|---|
| Draft Number: | PCS 2349 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 360

Short Title: Boat Number Fees. (Public)

Sponsors: Senators Albertson; Carpenter, Dannelly, Jordan, Kerr, Kincaid, Martin of Pitt, Warren, and Weinstein.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO ISSUE CERTIFICATES OF BOAT NUMBER AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-5(e) reads as rewritten:

"(e) The Wildlife Resources Commission may award any certificate of number directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the ~~awarding thereof.~~ purpose of issuance, renewal, and transfer of permanent and temporary certificates of boat number subject to the requirements set forth in subsection (a) of this section. ~~In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award,~~ Upon acceptance of this authorization, an agent may be assigned certificates and numbers which, upon issuance in conformity with this Chapter and with any rules and regulations of the Commission, shall be valid as if ~~awarded~~ issued directly by the Commission. As compensation for ~~his services any such agent shall be allowed to retain for his own use fifty cents (50¢). It is a Class 1~~

~~misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.~~ services rendered to the Commission, the agent may deduct six percent (6%) of the proceeds from the fee charged for issuance, renewals, and transfer of certificates of boat number. Nothing in this subsection precludes an agent from charging the customer a reasonable additional fee to pay for the cost of processing the application for a certificate of number or for issuance of a temporary certificate of number, provided that the agent prominently displays notice of the service fee and informs the customer of the fee prior to processing the application."

Section 2. G.S. 75A-5(l) reads as rewritten:

"(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission ~~is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents.~~ may establish administrative guidelines that prescribe:

(1) The qualifications of agents;

(2) The duties of agents;

(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;

(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;

(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and

(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.

In accordance with ~~such regulations,~~ administrative guidelines developed pursuant to this section, the executive director ~~is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency.~~ may:

(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;

(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;

(3) Conduct periodic and special audits of accounts;

(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and

(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds in the event of the termination of an agency.

A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. ~~Any violation of the regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents

shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale."

Section 3. G.S. 75A-11(b) reads as rewritten:

"(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of ~~one~~ five hundred dollars ~~($100.00),~~ ($500.00), shall, within 10 days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence."

Section 4. G.S. 75A-14 is repealed.

Section 5. This act is effective when it becomes law.

**North Carolina General Assembly**
**Legislative Services Office**

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June 12, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 360 - BOAT NUMBER FEES**
**Proposed Committee Substitute**
Senator Albertson

Senate Bill 360 would increase the fee paid to agents of the Wildlife Resources Commission to issue certificates of boat number, and amend the duties of the Wildlife Resources Commission with regard to the appointment of agents for the issuance of boat numbers. The bill would also raise the reporting requirement for boating accidents to damages in excess of $500, and repeal the law requiring permits from the Wildlife Resources Commission to hold regattas and other events.

Every watercraft or structure, other than a seaplane on the water, which is used or capable of being used as a means of transportation or habitation on the water is required to be numbered. No person may operate or give permission for the operation of a vessel unless the certificate of number awarded to the vessel is in full force and effect, and the identifying number is set forth on the certificate of number and is displayed on each side of the bow. Under G.S. 75A-5 (copy attached), the owner of each vessel requiring numbering by this State must file an application for number with the Wildlife Resources Commission. The applicant has the option of selecting a 1-year or a 3-year numbering period. The Commission may authorize any person to act as agent for the awarding of certificates of number.

**Section 1** of the bill provides that the Wildlife Resources Commission may use agents for vessel transactions covering both certificates of number and certificates of title; Parts 1 and 4 of Article 75A. It also changes the compensation paid to agents for handling the various vessel transactions. Currently agents issuing boat number certificates retain 50 cents per transaction. The bill establishes a schedule of commissions to be received from the statutory fee as follows:

1. Renewal of vessel registration: $3.00.
2. Transfer of ownership and registration of vessel: $3.00.
3. Issuance of a new certificate of vessel number and registration: $3.00.
4. Issuance of duplicate vessel registration: $0.50.
5. Issuance, transfer, duplication of lien recordation of vessel title: $3.00.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Fees for three year certificates of number are $20. Fees for the issuance of a certificate of title are $20 for each title and $10 for each transfer of title, duplicate title, or recording of a supplemental lien.

**Section 2** of the bill amends G.S. 75A-5(1) regarding the appointment of agents for the issuance of boat numbers. It rewrites the Commission's authority to establish administrative guidelines with respect to agent qualifications, agent duties, methods to ensure accountability and security for proceeds and unissued certificate numbers, security bond requirements, methods and procedures for relieving agents of responsibilities, and any other requirements or conditions deemed necessary. It provides that a late penalty of 25% of the issuing fee will be assessed against an agent for all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

**Section 3** of the bill amends G.S. 75A-11(b) to increase the threshold for the required reporting of boating accidents from $100 to $500 in property damage.

**Section 4** of the bill repeals G.S. 75A-14 , which requires a permit for regattas, boat races, marine parades, tournaments, or exhibitions on the waters of this State.

The bill would be effective when it becomes law.

**North Carolina General Assembly**
**Legislative Services Office**

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June 12, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **SENATE BILL 360 - BOAT NUMBER FEES**
**Proposed Committee Substitute**
Senator Albertson

Senate Bill 360 would increase the fee paid to agents of the Wildlife Resources Commission to issue certificates of boat number, and amend the duties of the Wildlife Resources Commission with regard to the appointment of agents for the issuance of boat numbers. The bill would also raise the reporting requirement for boating accidents to damages in excess of $500, and repeal the law requiring permits from the Wildlife Resources Commission to hold regattas and other events.

Every watercraft or structure, other than a seaplane on the water, which is used or capable of being used as a means of transportation or habitation on the water is required to be numbered. No person may operate or give permission for the operation of a vessel unless the certificate of number awarded to the vessel is in full force and effect, and the identifying number is set forth on the certificate of number and is displayed on each side of the bow. Under G.S. 75A-5 (copy attached), the owner of each vessel requiring numbering by this State must file an application for number with the Wildlife Resources Commission. The applicant has the option of selecting a 1-year or a 3-year numbering period. The Commission may authorize any person to act as agent for the awarding of certificates of number.

**Section 1** of the bill provides that the Wildlife Resources Commission may use agents for vessel transactions covering both certificates of number and certificates of title; Parts 1 and 4 of Article 75A. It also changes the compensation paid to agents for handling the various vessel transactions. Currently agents issuing boat number certificates retain 50 cents per transaction. The bill establishes a schedule of commissions to be received from the statutory fee as follows:

1. Renewal of vessel registration: $3.00.
2. Transfer of ownership and registration of vessel: $3.00.
3. Issuance of a new certificate of vessel number and registration: $3.00.
4. Issuance of duplicate vessel registration: $0.50.
5. Issuance, transfer, duplication of lien recordation of vessel title: $3.00.

Fees for three year certificates of number are $20. Fees for the issuance of a certificate of title are $20 for each title and $10 for each transfer of title, duplicate title, or recording of a supplemental lien.

**Section 2** of the bill amends G.S. 75A-5(1) regarding the appointment of agents for the issuance of boat numbers. It rewrites the Commission's authority to establish administrative guidelines with respect to agent qualifications, agent duties, methods to ensure accountability and security for proceeds and unissued certificate numbers, security bond requirements, methods and procedures for relieving agents of responsibilities, and any other requirements or conditions deemed necessary. It provides that a late penalty of 25% of the issuing fee will be assessed against an agent for all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

**Section 3** of the bill amends G.S. 75A-11(b) to increase the threshold for the required reporting of boating accidents from $100 to $500 in property damage.

**Section 4** of the bill repeals G.S. 75A-14 , which requires a permit for regattas, boat races, marine parades, tournaments, or exhibitions on the waters of this State.

The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 360
Proposed Committee Substitute S360-PCS6690

Short Title: Boat Number Fees. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-5(e) reads as rewritten:

"(e) The Wildlife Resources Commission may ~~award~~ issue any ~~certificate of number~~ vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the ~~awarding thereof.~~ issuance of vessel transactions subject to the requirements set forth in this Chapter. ~~In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award,~~ Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter ~~in conformity with this Chapter and with any rules and regulations of the Commission,~~ shall be valid as if ~~awarded~~ issued directly by the Commission. As compensation for ~~his services any such agent shall be allowed to retain for his own use fifty cents (50¢).~~ services rendered to the

Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of vessel registration - $1.25.
(2) Transfer of ownership and registration of a vessel - $3.00.
(3) Issuance of new certificate of vessel number and registration - $3.00.
(4) Issuance of duplicate vessel registration - $0.50.
(5) Issuance, transfer, duplication, or lien recordation of vessel title - $3.00.

It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services."

Section 2. G.S. 75A-5(l) reads as rewritten:

"(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission ~~is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents.~~ may establish administrative guidelines that prescribe:

(1) The qualifications of agents;
(2) The duties of agents;

(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;
(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;
(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and
(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.

In accordance with ~~such regulations,~~ administrative guidelines developed pursuant to this section, the executive director ~~is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency.~~ may:

(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;
(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;
(3) Conduct periodic and special audits of accounts;
(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and
(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds in the event of the termination of an agency.

A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. ~~Any violation of the regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five

percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale."

Section 3. G.S. 75A-11(b) reads as rewritten:

"(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of ~~one~~ five hundred dollars ~~($100.00),~~ ($500.00), shall, within 10 days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence."

Section 4. G.S. 75A-14 is repealed.

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 221

Short Title: Initial Appearance by Video. (Public)

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

Referred to: Judiciary II.

February 17, 1997

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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 221
Proposed Committee Substitute H221-PCS1382

Short Title: Initial App./Warrants by Video. (Public)

Sponsors:

Referred to:

February 17, 1997

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 AND TO ALLOW SWORN LAW ENFORCEMENT OFFICERS TO APPEAR BEFORE JUDICIAL OFFICIALS BY A TWO-WAY AUDIO AND VIDEO TO OBTAIN ARREST WARRANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-511 is amended by adding a new subsection to read:

"(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. Prior to the use of audio and video transmission pursuant to this subsection, 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."

Section 2. G.S. 15A-304(d) reads as rewritten:

"(d) Showing of Probable Cause. -- A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe

that a crime has been committed and that the person to be arrested committed it. The information must be shown by ~~either or both~~ one or more of the following:

(1) ~~Affidavit,~~ Affidavit;

(2) Oral testimony under oath or affirmation before the issuing ~~official.~~ official; or

(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, 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.

If the information is insufficient to show probable cause, the warrant may not be issued."

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, June 12, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **360** Boat Number Fees

| | |
|---|---|
| Draft Number: | PCS 6690 |
| Sequential Referral: | Finance |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **221** Initial Appearance by Video

| | |
|---|---|
| Draft Number: | PCS 1382 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **533** Equitable Distribution/Divisible Property

| | |
|---|---|
| Draft Number: | PCS 1400 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary — 6/12/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| David Anders | PFFNC |
| Bill Goggin | NCRA |
| R. Paul Williams | NCMBA |
| JE Hobbs | NCHMA |
| Leanne Winner | E&HS |
| Eddie Caldwell | HMCMCC P.A. |
| David Fenell | Hafer, McNamara Caldwell, McElroy LC |
| Charles Fullwood | NC Wildlife |
| Jim Cain | DA - 21st Dist / NC Conf of D.A. |
| PE Taylor | AOC |
| Don McConaughdale | NCNMA |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JUNE 17, 1997

The Senate Judiciary Committee met on Tuesday, June 17, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Odom, acting Chairman, called the meeting to order and recognized Senator Cooper to explain **House Bill 810** - AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX for Representative Tolson, the bill sponsor.

Senator Shaw moved to adopt a Proposed Committee Substitute for House Bill 810 for discussion. The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Finance Committee. The motion carried by voice vote.

Senator Cooper recognized Senator Hoyle to explain **Senate Bill 853** - AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAX ON CONTROLLED SUBSTANCES AND COUNTERFEIT DRUGS AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS.

The following people were recognized to speak on the bill or answer questions from the Committee:

Richard Riddle - Dept. of Revenue, Controlled Substance Division
Dewey Sanders - Dept. of Revenue, Field Operations
Walker Reagan - Committee Counsel

Senator Rand moved to give the bill a favorable report and re-refer it to the Appropriations Committee. The motion carried by voice vote.

Senator Weinstein was recognized to explain **Senate Bill 893** - AN ACT TO REGULATE CHARITABLE BINGO.

Senator Soles moved to adopt a Proposed Committee Substitute for Senate Bill 893 for discussion. The motion carried by voice vote.

Because of a lack of sufficient time for discussion, Senator Cooper asked that the Proposed Committee Substitute be taken up at the next meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 17, 1997

| | | |
|---|---|---|
| SB 853 | Revenue Officers' Police Powers | Conder |
| SB 893 | Regulating Charitable Bingo | Weinstein |
| HB 810 | Nash Room Tax | Tolson |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 810

Short Title: Nash and Edgecombe Room Taxes. (Local)

Sponsors: Representative Tolson.

Referred to: Ways and Means, if favorable, Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AUTHORIZE EDGECOMBE COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax

under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Nash Tourism Development Authority. The Authority shall spend at least two-thirds of the funds remitted to it under this subsection only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional

activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. (a) Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in

monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or reduction. -- A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to Nash and Edgecombe Counties.

Section 3. Edgecombe Occupancy Tax. (a) Authorization and scope. The Edgecombe County Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Edgecombe County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Edgecombe Tourism Development Authority. The Authority shall spend at least two-thirds of the funds remitted to it under this subsection only to promote travel and tourism in Edgecombe County, and shall spend the remainder on tourism-related expenditures. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials,

conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

Section 4. Edgecombe Tourism Development Authority. (a) Appointment and membership. When the Board of Commissioners of Edgecombe County adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Edgecombe County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 5. This act is effective when it becomes law.

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June 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 810 - NASH ADDITIONAL ROOM TAX AND GOLD ROCK ANNEXATION -** Representative Tolson.

The Proposed Senate Committee Substitute for House Bill 810 is a local bill which would allow Nash County to adopt an additional three percent room occupancy tax to be used exclusively for the construction, operation, and marketing of a convention center. The bill would also authorize the City of Rocky Mount to annex 71.70 along Interstate 95 known as Gold Rock.

Nash County currently has a three-percent occupancy tax for the rental of rooms, lodging or similar accommodations furnished by hotels, motels, inns or other similar places. The funds generated by this tax may be spend as two-thirds to promote travel and tourism and one-third for travel related expenditures which include expenditures designed to increase the use of lodging facilities and to attract tourist and business travelers, including a convention center. This bill would authorize an additional three-percent tax but would limit the use of these funds to the convention center.

Section 3 of the bill would authorize the City of Rocky Mount to do a satellite annexation of the Gold Rock - I-95 Interchange. The annexation would have to be effective by at least July 1, 1998.

The bill is effective when it becomes law.

H810-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H810-CSRU-003
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 810
THIS IS A DRAFT 13-JUN-97 11:56:23
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Nash Room Tax/Rocky Mount Annex. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County

Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236~~

~~for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy ~~tax~~ taxes to the Nash Tourism Development ~~Authority.~~ Authority, itemized by tax. ~~The~~ Of the net proceeds of the tax levied under subsection (a) of this section, the Authority shall spend at least two-thirds ~~of the funds remitted to it under this subsection~~ only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The Authority shall spend the net proceeds of the tax levied under subsection (a1) of this section only to construct, maintain, operate, or market a convention center. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

Section 3. Gold Rock Annexation. (a) The corporate limits of the City of Rocky Mount are extended to include the Gold Rock I-95 interchange area as described below:

Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County ABC Board, THE POINT OF BEGINNING; thence along the property of Nash County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property line of McLane Company, Inc.; thence along said property line the following six courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; hence N 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point; thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the eastern right of-way of Interstate 95 the following four courses and distances: N 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve concave to the right having a radius of 876.93 feet and a chord bearing and distance of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right having a radius

of 638.20 feet and a chord bearing and distance of N 14°20'06"W 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the southwestern corner of the property now or formerly owned by Harry A. Whitaker, Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31 feet to a point on the eastern right-of-way of Goldrock Road; thence along the property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of Beginning containing 71.70 acres and being in South Whitakers Township, Nash County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

(b) The corporate limits of the area annexed by subsection (a) of section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area annexed by subsection (a) of this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the municipality.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective only if the City Council of the City of Rocky Mount adopts an ordinance including the area described in subsection (a) of this section in the corporate limits of the City of Rocky Mount. The ordinance is effective at the date specified therein, but not later than July 1, 1998.

Section 4. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Wednesday, June 18, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **810** Nash and Edgecombe Room Taxes

| | |
|---|---|
| Draft Number: | PCS 8254 |
| Recommended Referral: | Finance |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

**North Carolina General Assembly**
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June 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 853 - REVENUE OFFICERS' POLICE POWERS** - Senators Condor and Hoyle.

Senate Bill 853 would authorize the Secretary of Revenue to appoint Department of Revenue employees as revenue law enforcement agents to collect controlled substances and counterfeit drug taxes, and to enforce the criminal provisions of the revenue laws.

Section 1 of the bill would added a new section to the general administration provisions of the state revenue laws by authorizing the Secretary of Revenue to appoint employees of the Criminal Investigations Division to enforce criminal laws related to tax administration and enforcement, and employees of the Controlled Substances Tax Division to enforce the excise tax on controlled substances. All revenue law enforcement officers must be certified as a criminal justice officer by the North Carolina Criminal Justice Education and Training Standards Commission as are all other sworn law enforcement officers. Under this section these law enforcement officers would be given statewide jurisdiction but would be limited to the subject matter jurisdiction for which they were appointed, which would limit their jurisdiction to tax administration and enforcement or controlled substances excise tax collection. The officer will have the full power of arrest within these subject matter jurisdictions.

Section 2 adds revenue law enforcement officers to officers covered by the NC Criminal Justice Education and Training Standards Commission.

Section 3 excludes revenue law enforcement officers from the definition of "law-enforcement officer" under the Teachers and State Employees Retirement System. Section 4 excludes these officers from the State Law-Enforcement Officers Retirement Fund law. Section 5 adds these officers to Salary Continuation Plan for Certain State Law-Enforcement Officers law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 6 appropriates to the Department of Revenue $67,503 for FY 97-98 and $45,385 for FY 98-99 to provide retirement and longevity costs for certified revenue law enforcement officers and to fund equipment and training.

The bill becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 853

Short Title: Revenue Officers' Police Powers. (Public)

Sponsors: Senators Conder and Hoyle.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAX ON CONTROLLED SUBSTANCES AND COUNTERFEIT DRUGS AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the criminal laws relating to tax administration and enforcement. The Secretary may appoint employees of the Controlled Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on controlled substances and other provisions of Article 2D of this Chapter. In order to serve as a revenue law enforcement officer, an employee shall be certified as a criminal justice officer under Chapter 17C of the General Statutes.

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law

enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands."

Section 2. G.S. 17C-2 reads as rewritten:

"**§ 17C-2. Definitions.**

Unless the context clearly otherwise requires, the following definitions apply in this Chapter:

~~(a) "Commission" means the~~ (1) Commission. -- The North Carolina Criminal Justice Education and Training Standards ~~Commission;~~ Commission.

~~(b) "Criminal justice agencies" means the~~ (2) Criminal justice agencies. -- The State and local law-enforcement agencies, the State correctional agencies, other correctional agencies maintained by local governments, and the juvenile justice agencies, but shall not include deputy sheriffs, special deputy sheriffs, sheriffs' jailers, or other sheriffs' department personnel governed by the provisions of Chapter 17E of these General ~~Statutes;~~ Statutes.

~~(c) "Criminal justice officer(s)" means and incorporates the~~ (3) Criminal justice officers. -- The administrative and subordinate personnel of all the departments, agencies, units or entities comprising the ~~"criminal justice agencies," as defined in subsection (b);~~ criminal justice agencies who are sworn law-enforcement officers, both State and local, with the power of arrest; revenue law enforcement officers; State correctional officers; State probation/parole officers; officers, supervisory and administrative personnel of local confinement facilities; State youth services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts.

~~(d) "Entry level" means the~~ (4) Entry level. -- The initial appointment or employment of any person by a criminal justice agency, or any appointment or employment of a person previously employed by a criminal justice agency who has not been employed by a criminal justice agency for the 12-month period preceding this appointment or employment, or any appointment or employment of a previously certified criminal justice officer to a position which requires a different type of certification."

Section 3. G.S. 135-1(11b) reads as rewritten:

"(11b) 'Law-Enforcement Officer' means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State of North Carolina or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the

authority of the State. The term does not include a revenue law-enforcement officer."

Section 4. G.S. 143-166.30(a)(4) reads as rewritten:

"(4) 'Law-enforcement officer' means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. The term does not include a revenue law-enforcement officer."

Section 5. G.S. 143-166.13(a) is amended by adding a new subdivision to read:

"(18) Sworn State Law-Enforcement Officers with the power of arrest, Department of Revenue."

Section 6. There is appropriated from the General Fund to the Department of Revenue the sum of sixty-seven thousand five hundred three dollars ($67,503) for the 1997-98 fiscal year and the sum of forty-five thousand three hundred eighty-five dollars ($45,385) for the 1998-99 fiscal year to provide retirement and longevity costs for certified revenue law enforcement officers and to fund equipment and training.

Section 7. This act becomes effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, June 17, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. **853** Revenue Officers' Police Powers
Sequential Referral: Appropriations
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

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June 17, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter and O. Walker Reagan, Committee Co-Counsel

**RE:** **SENATE BILL 893 - BINGO REGULATIONS**
**Proposed Committee Substitute**
Senator Weinstein.

The proposed committee substitute for Senate Bill 893 amends the law governing charitable bingo games to permit jackpot bingo, increase the maximum value of prizes that can be given in these games, increase the fees that may be charged for licensing charitable, non-profit organizations permitted to operate these games. The proposed committee substitute repeals "beach bingo" and provides regulated commercial bingo.

Under current law a qualified charitable, non-profit organization (must meet both federal and State criteria as charitable, non-profit, exempt from taxation) may conduct up to two 5-hour bingo sessions per week, provided that each session is separated by at least two days, with maximum prize limits of $500 per game, $1,500 per session if two session per week are held, or $2,500 if only one session per week is held. The current application fee for a qualified organization to apply for a license is $100 per year.

This bill would make the following changes to the law regarding bingo conducted by exempt organizations:

1. Permits a once a session jackpot bingo game prize of $2,500.
2. Increases the maximum prize limit from $1,500 per session to $3,500 per session.
3. Makes violation of the prize limits (by offer or receipt) a Class I felony.
4. Increases the application fee from $100 to $300 for a regular license and leaves the fee at $100 for a limited occasion permit.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

5. Redirects the revenues from the applications fees from the General Fund to a new Bingo Regulation Enforcement Fund.
6. Permits an administrative suspension of the license for games conducted in violation of the law, with a right to a contested case hearing before an administrative law judge under the Administrative Procedures Act.
7. Restricts the days and hours of bingo to the times specified in the license, and makes violation of the provision a Class I felony.
8. Increases the length of a game session from 5 hours to 6 hours.
9. Permits two game sessions to only be separated by 15 hours, instead of 48 hours.
10. Prohibits a person convicted of felonies involving obtaining property under false pretenses or gambling from operating or conducting games under this law.
11. Raises the maximum rent a qualified organization can pay for a facility to conduct the games in from maximum monthly rent equal to 1 ¼% to 1 ½% of the assessed property tax value.
12. Increases penalty for making false statements in annual audit from Class 2 misdemeanor to Class I felony.

All licenses are good for one year and may be renewed upon qualification and payment of the application fee.

Beginning with Section 10 the bill rewrites the law which currently permits "beach bingo" . **Beach bingo** is currently defined as a bingo game for which the prize does not have a value greater than $10 (presumably either cash or merchandise).

Under G.S. 14-309.14 beach bingo may not be held in conjunction with any other lawful bingo game, with any "promotional bingo game" or with any other offering of an opportunity to obtain anything of value, whether for valuable consideration or not. Because G.S. 14-309.14 says that the remainder of the Article does not apply to beach bingo, beach bingo may be held anytime and as frequently as desired by any person or company. Beach bingo is also not subject to any of the licensing or regulatory requirements applicable to charitable bingo. The only restriction or limitation on beach bingo is the limit on the amount of the prize per game. There is no limit on the total number of prizes awarded in a session. The bill renames it "commercial bingo" and provides for the same licensing and supervision that applies to charitable bingo, with the following exceptions:

1. It is a Class I felony to conduct commercial bingo games in violation of the law.
2. A commercial bingo license costs $500
3. Limited to 5 sessions per week ; the length of a session is 7 hours.
4. Maximum prize remains at $10 per game, any violation of limit is Class I felony

Provisions in Section 8 of the bill are applicable to both charitable bingo & commercial bingo. It is a Class I felony for any person to operate a bingo game without a license, or while the license is revoked or suspended.

The substantive provisions of the bill become effective December 1, 1997. DHR has authority to adopt rules to implement the changes made in the law when the bill becomes law.

S893-SMRV-003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S893-CSRV-005
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 893
THIS IS A DRAFT 16-JUN-97 18:32:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Bingo Regulations. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REGULATION OF CHARITABLE BINGO AND TO REGULATE COMMERCIAL BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 309.5 reads as rewritten:

"**§ 14-309.5. Charitable Bingo.**

~~(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified herein; that the only justification for this Part is to support such charitable, nonprofit causes; and such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.~~

~~(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any~~

~~licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction such person shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting services to any licensee. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.~~

(a) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization, or any person who is employed by a licensed exempt organization, who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor unless a greater penalty is prescribed for the offense in question. Upon conviction neither the person nor the licensed exempt organization shall conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part.

(b) If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any applicable provision of this Part, the Secretary, or the Secretary's designee, may immediately suspend the license of that licensed exempt organization for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence.

(c) It shall not constitute a violation of any State law for a licensed exempt organization to advertise a bingo game conducted in accordance with this Part."

Section 2. G. S. 14-309.6 reads as rewritten:

"§ 14-309.6. Definitions.

For purposes of this Part, the term:

~~(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term "exempt organization" means the local branch or chapter operating the bingo game);~~

~~(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~

~~(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.~~

~~(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:~~

~~a. The county police force; or~~

~~b. The county sheriff's office in a county with no county police force;~~

~~(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the~~

~~corporate limits of a municipality having a police force;~~

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

~~(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid license.~~

(1) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on the cards conforming to a predetermined pattern of numbers and the game is completed when one individual card conforms to the predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);

(2) 'Commercial bingo games' means any bingo game other than one conducted by a licensed exempt organization or any bingo game conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes for which admission is charged for a bingo session at which a bingo game is played or for which a person is charged to play a bingo game.

(3) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit

volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(4) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo conducted by a licensed exempt organization in which a player must cover a specified number of spaces to win;

(5) 'Licensed commercial bingo operator' means any person or entity licensed pursuant to G.S. 14-309.14 to conduct commercial bingo games and any employee or agent of such person or entity engaged in the conduct of commercial bingo games on behalf of or under the direction of such person or entity;

(6) 'Licensed exempt organization' means an exempt organization which possesses a currently valid license pursuant to G.S. 14-309.7; and

(7) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force. For any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force, 'local law-enforcement agency' means the county police force or the county sheriff's office in a county with no county police force."

Section 3. G.S. 14-309.7 reads as rewritten:

"§ 14-309.7 Licensing ~~procedure.~~ procedure for exempt organizations; limited occasion permits.

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ three hundred dollars ($300.00) to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and

regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by a licensed exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(b) Each application and renewal application shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

~~(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. Such pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings must be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and one-quarter percent (1 1/4%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game must be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General~~

~~Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

~~(d) Conduct of a bingo game or raffle under this Part on such property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.~~

~~(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require such information as is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. Such report may require such information as is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided such arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision.~~

(c) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require any information that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require

more information than is required in subsection (b) of this section for application for a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. The report may require any information that is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as provided in this subsection, all provisions of this Part applicable to licensed exempt organizations shall apply to any exempt organization operating a bingo game under a limited occasion permit."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

The number of sessions of bingo conducted ~~or sponsored~~ by ~~an~~ a licensed exempt organization shall be limited to two sessions per week and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same licensed exempt organization. A licensed exempt organization may conduct a bingo session only on the day or days of the week and at the time of day selected by that exempt organization in its application for a bingo license and listed on the face of the bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt

organization may conduct a session of bingo on a day other than that which appears on the face of the license, provided that the conduct of the bingo session would not cause that licensed exempt organization to exceed the session limits during any one calendar week set forth in this section or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the license. This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes. Any person who violates this section shall be guilty of a Class I felony."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§14-309.9. Bingo prizes.**

~~(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of bingo is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is one thousand five hundred dollars ($1,500). Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

~~(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.~~

~~(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(a) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one game of bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00).

(b) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided

that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo.

(c) The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid by a licensed exempt organization at any one session of bingo is three thousand five hundred dollars ($3,500). Any winner of a prize for any one bingo game must be paid that prize before the commencement of another bingo game. Prizes in cash or merchandise that may be offered or paid by a licensed exempt organization for a jackpot bingo game shall be excluded from this maximum aggregate amount.

(d) It is a Class I felony for any person to offer or receive a prize in cash or merchandise greater than:

(1) five hundred dollars ($500.00) for any one bingo game operated by a licensed exempt organization;

(2) five hundred dollars ($500.00) in exchange for a prize offered or received in cash or merchandise for any one bingo game operated by a licensed exempt organization;

(3) two thousand five hundred dollars ($2,500) for any one jackpot bingo game operated by a licensed exempt organization; or

(4) two thousand five hundred dollars ($2,500) in exchange for a prize offered or received in cash or merchandise for any one jackpot bingo game operated by a licensed exempt organization.

(e) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§14-309.10. Operation of ~~bingo.~~ bingo, conduct of games for licensed exempt organizations, qualified premises.**

(a) The operation of bingo games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the licensed exempt organization in the manner provided by the rules of the exempt organization.

(b) In order for a licensed exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this

member to be responsible for the receiving, reporting and depositing of all revenues received, the licensed exempt organization may pay one member for conducting a bingo game. The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of a licensed exempt organization.

(c) Except as provided in G.S. 14-309.7(c), a licensed exempt organization may hold a bingo game only in or on property owned either legally or equitably by the organization or leased by the organization from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to. The total monthly rental shall be an amount not to exceed one and one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein, including the playing of bingo for a period of not less than one year and actually occupied and used by that exempt organization on a regular basis for purposes other than bingo for at least six months before the game. All equipment used by the exempt organization in conducting the bingo game shall be owned by the organization.

(d) Unless the exempt organization leases the property in accordance with subsection (c) of this section, a licensed exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. Conduct of a bingo game or raffle under this section shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes."

Section 7. G.S. 14-309.11 reads as rewritten:

"**§ 14-309.11.** ~~Accounting~~ Licensed exempt organizations; accounting, enforcement, and use of proceeds.

(a) All funds received in connection with a bingo game conducted by a licensed exempt organization shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed exempt organization may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used [in conducting the raffle and] in playing bingo, taxes and license fees related to bingo and the payment of compensation as authorized by ~~G.S. 14-309.7(c)~~ G.S. 14-309.10(b) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law-enforcement agency~~ at a time directed

by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;
(2) The location and date at which each bingo game was conducted and the prize awarded;
(3) The gross receipts of each bingo game;
(4) The cost or amount of any prize given at each bingo game;
(5) The amount paid in prizes at each ~~session;~~ session of bingo;
(6) The net return to the exempt organization; and
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a ~~Class 2 misdemeanor.~~ Class I felony.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained by a licensed exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is ~~gambling.~~ gambling; penalties.**

(a) A bingo game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game

may be instituted as provided for in Chapter 19 of the General Statutes.

(b) It shall be a Class I felony for any person:

(1) to operate any bingo game without a license;

(2) to operate any bingo game while license is revoked or suspended;

(3) to willfully misuse or misapply any moneys received in connection with any bingo game;

(4) to contract with or provide consulting services in connection with a bingo game to any licensed exempt organization; or

(5) to operate commercial bingo games at a location at which an exempt organization is licensed to conduct bingo games."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any licensed exempt organization operating a bingo game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game open to the general public."

Section 10. G.S. 14-309.14 reads as rewritten:

"**§ 14-309.14. ~~Beach bingo.~~ Commercial bingo.**

~~Nothing in this Article shall apply to "beach bingo" games except for the following subdivisions:~~

~~(1) No beach bingo game may offer a prize having a value greater than ten dollars ($10.00). Any person offering a greater than ten-dollar ($10.00) but less than fifty-dollar ($50.00) prize is guilty of a Class 2 misdemeanor. Any person offering a prize of fifty dollars ($50.00) or greater is guilty of a Class I felony.~~

~~(2) No beach bingo game may be held in conjunction with any other lawful bingo game, with any "promotional bingo game", or with any offering of an opportunity to obtain anything of value, whether for valuable consideration or not. No beach bingo game may offer free bingo games as a promotion, for prizes or otherwise. Any person who violates this subsection is guilty of a Class I felony.~~

~~(3) G.S. 18B-308 shall apply to beach bingo games.~~

~~(4) Upon conviction under any provision of this section, such person shall not conduct a bingo game for a period of at least one year.~~

(a) It is lawful for any person to conduct commercial bingo games in accordance with the provisions of this Part. Any person who conducts a commercial bingo game in violation of any applicable provision of this Part shall be guilty of a Class I felony. Upon conviction such person shall not conduct a bingo game for a period of one year.

(b) No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the commercial bingo game activities of a licensed commercial bingo operator.

(c) If the Department of Human Resources finds that any licensed commercial bingo operator who conducts a commercial bingo game is in violation of any applicable provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed commercial bingo operator may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a commercial bingo game conducted in accordance with this Part."

Section 11. Part 2 of Article 37 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-309.14A. Licensing procedure for commercial bingo games; qualified premises.**

(a) No person may operate a commercial bingo game at a location without a commercial bingo license. Application for a commercial bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of five hundred dollars ($500.00) to defray the cost of issuing commercial bingo licenses, handling commercial bingo audit reports, and regulating the operation of commercial bingo games. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This commercial bingo license shall expire one year after the granting of the license. This commercial bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.14D(b). A copy of the application and commercial bingo license shall be furnished to the local law enforcement agency in the county or municipality in which the licensed commercial bingo operator intends to operate before commercial bingo is conducted by the licensee. The day or days of the week and the time of day a session of commercial bingo shall be operated by a licensed commercial bingo operator shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is played.

(b) Each application and renewal application for a commercial bingo license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation or other similar legal entity, the name and home address of each of the officers of the entity as well as the name and address of the directors, or other persons similarly situated, of the entity.

(2) The location at which the applicant will conduct the commercial bingo games. If the premises are leased, a copy of the lease or rental agreement.

(3) The day or days of the week on which the applicant will conduct the commercial bingo games.

(4) The time of day at which the applicant will begin a commercial bingo session and the time of day by which the commercial bingo session will end.

(c) A licensed commercial bingo operator may hold a commercial bingo game only in or on property owned either legally or equitably by the licensed commercial bingo operator or leased by the licensed commercial bingo operator from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms, and not movable or of a temporary nature such as a tent or lean-to. All equipment used by the licensed commercial bingo operator in conducting the commercial bingo game shall be owned by the commercial bingo operator.

**§ 14-309.14B. Limit of Sessions of Commercial Bingo.**

(a) The number of sessions of commercial bingo conducted by a licensed commercial bingo operator shall be limited to five sessions per week and these sessions shall not exceed seven hours each per session. No two seasons of commercial bingo shall be held within a 15-hour period of time. A licensed commercial bingo operator may conduct a commercial bingo session only on the days of the week and at the time of day selected by that licensed commercial bingo operator in its application for a commercial bingo license and listed on the face of the commercial bingo license. Upon 10 days' prior notice to the Department of Human Resources, a licensed commercial bingo operator may conduct a session of commercial bingo on a day other than that which appears on the face of the commercial bingo license, provided that the conduct of the commercial bingo session would not cause that licensed commercial bingo operator to exceed the session limits during any one calendar week set forth in this section. A separate notice shall be required by the Department of Human Resources for each commercial bingo session which will be conducted on a day other than that which appears on the face of the commercial bingo license.

**§ 14-309.14C. Commercial Bingo Prizes.**

(a) The maximum prize in cash or merchandise that may be offered by a licensed commercial bingo operator for any one commercial bingo game is ten dollars ($10.00). Any winner of a prize for any one commercial bingo game must be paid that prize before the commencement of another commercial bingo game. No commercial bingo game may be held in conjunction with any other lawful bingo game, with any 'promotional bingo game', or with any offering of an opportunity to obtain anything of value, whether

for consideration or not. No commercial bingo game may offer free commercial bingo games as a promotion, for prizes or otherwise.

(b) No person shall offer or receive a prize in cash or merchandise greater than ten dollars ($10.00) for any one commercial bingo game. No person shall offer or receive cash or merchandise greater than ten dollars ($10.00) in exchange for a prize offered or received in cash or merchandise for any one commercial bingo game.

(c) Any person who violates this section shall be guilty of a Class I felony.

**§ 14-309.14D. Commercial bingo; accounting, enforcement, and use of proceeds.**

(a) All the funds received in connection with a commercial bingo game shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed commercial bingo operator may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used in playing commercial bingo, taxes and license fees related to bingo and the payment of compensation and for the purposes set forth below for the remaining proceeds. These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the licensed commercial bingo operator.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources at a time directed by the Department of Human Resources. Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class I felony. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of commercial bingo games conducted by the licensed commercial bingo operator;

(2) The location and date at which each commercial bingo game was conducted and the prize awarded;

(3) The gross receipts of each commercial bingo game;

(4) The cost or amount of any prize given at each commercial bingo game;
(5) The amount paid in prizes at each session of commercial bingo;
(6) The net return to the licensed commercial bingo operator;
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee; and
(8) The name and address of all employees or agents conducting commercial bingo games during the reporting period on behalf of or under the direction of the person or entity listed as the applicant in the application for a commercial bingo license.

(c) All books, papers, records and documents relevant to determining whether a licensed commercial bingo operator or an employee of a licensed commercial bingo operator has acted or is acting in compliance with this section shall be maintained by the licensed commercial bingo operator for three years and shall be open to inspection by the law enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General or his designee, or any local law enforcement agency may conduct inspections of premises where commercial bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section.

(d) G.S. 18B-308 shall apply to commercial bingo games."

Section 10. From funds appropriated to the Department of Human Resources for the 1997-98 fiscal year and from fees received pursuant to this act, the Department shall hire two bingo field inspectors to assist with the regulation of commercial bingo and the enhanced enforcement of regulation of charitable bingo mandated by this act. A bingo field inspector shall perform duties as a designee of the Secretary of Human Resources.

Section 11. This act becomes effective December 1, 1997 and applies to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 893

Short Title: Regulating Charitable Bingo. (Public)

Sponsors: Senators Weinstein; Ballance, Carpenter, Cochrane, Conder, Cooper, Dalton, Kincaid, Ledbetter, Odom, Soles, and Warren.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHARITABLE BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

"**§ 14-309.5. Bingo.**

(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified ~~herein;~~ in this Part; that the only justification for this Part is to support ~~such~~ these charitable, nonprofit causes; and ~~such~~ this purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.

(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction ~~such~~ the licensed exempt organization and any person affiliated, in any way, with the licensed exempt organization shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting

services to any licensee. If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.

(c) It is lawful for an exempt organization to conduct charity game ticket games in accordance with the provisions of this Part. Any licensed exempt organization that conducts a charity game ticket game in violation of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction, that exempt organization shall not conduct a bingo game or charity game ticket game for a period of one year. It is lawful to participate in a charity game ticket game conducted pursuant to this Part. It shall be a Class I felony for any person:

(1) To sell or otherwise furnish charity game tickets other than in a charity game ticket game conducted by a licensed exempt organization in accordance with the provisions of this Part;

(2) To operate a charity game ticket game without a license;

(3) To operate a charity game ticket game while a license is revoked or suspended;

(4) To willfully misuse or misapply any moneys received in connection with any charity game ticket game;

(5) To contract with or provide consulting services to any licensee.

If the Department of Human Resources finds that any licensed exempt organization that conducts a charity game ticket game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a charity game ticket game conducted in accordance with this Part."

Section 2. G.S. 14-309.6 reads as rewritten:

"**§ 14-309.6. Definitions.**

For purposes of this Part, the term:

(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on ~~such~~ the cards conforming to a predetermined pattern of ~~numbers (but shall not include "instant bingo" which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~ numbers;

(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.

(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:

a. The county police force; or

b. The county sheriff's office in a county with no county police force;

(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force;

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid ~~license.~~ license;

(8) 'Charity game ticket' means a folded or banded ticket or card with perforated break-open tabs, made completely of paper or paper products, the face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prizewinners with the maximum amount which can be charged for each card being fifty cents (50¢);

(9) 'Charity game ticket game' means the sale of a separate package or series of packages consisting of one complete set of charity game tickets in which all tickets in the set bear the same serial number; and

(10) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo in which a player must cover a specified number of spaces to win."

Section 3. G.S. 14-309.7 reads as rewritten:

"**§ 14-309.7. Licensing procedure.**

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) for a Class A bingo license and three hundred dollars ($300.00) for a Class B bingo license to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. ~~This~~ Each class of bingo license shall expire one year after the granting of the license. ~~This~~ Each class of bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(a1) An exempt organization may not operate a charity game ticket game at a location without a license. Application for a charity game ticket game license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of two hundred dollars ($200.00) for a Class A charity game ticket game license and three hundred dollars ($300.00) for a Class B charity game ticket game license to defray the cost of issuing charity game ticket game licenses, handling charity game ticket game audit reports, and regulating the operation of charity game ticket games. An exempt organization shall hold a Class A or Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class A charity game ticket game license. An exempt organization shall hold a Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class B charity game ticket game license. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. Each class of charity game ticket game license shall expire one year after the granting of the license. Each class of charity game ticket game license may be renewed yearly, if the applicant pays the application fee and files an audit

with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law enforcement agency in the county or municipality in which the licensee intends to operate before charity game ticket games are conducted in conjunction with a bingo game conducted by the licensee. The day or days of the week and the time of day charity game ticket games are conducted by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played or charity game ticket games are conducted.

(b) Each application and renewal application for a Class A or Class B bingo license and a Class A or Class B charity game ticket game license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games and charity game ticket games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. ~~Such~~ The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the

purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of an exempt organization. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings ~~must~~ shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and ~~one-quarter percent (1 1/4%)~~ one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game ~~must~~ shall be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. ~~It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

(d) Conduct of a bingo game or raffle under this Part on ~~such~~ that property sh not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.

(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require ~~such~~ any information ~~as~~ that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. ~~Such~~ The report may require ~~such~~ any information ~~as~~ that is

reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided ~~such~~ that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. An exempt organization conducting only an annual or semiannual bingo game under this subsection may not apply for a charity game ticket game license, conduct charity game ticket games, or sell or furnish charity game tickets in any manner at any time. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

(a) The number of sessions of bingo conducted ~~or sponsored~~ by an exempt organization shall be limited to one session per week for those exempt organizations operating with a Class A bingo license and two sessions per week for those exempt organizations operating with a Class B bingo license and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same exempt organization. An exempt organization operating with a Class A bingo license may conduct a bingo session only on the day of the week and at the time of day selected by that exempt organization in its application for a Class A bingo license and listed on the face of the Class A bingo license issued by the Department. An exempt organization operating with a Class B bingo license may conduct bingo sessions only on one or more of the two days and at the time of day selected by that exempt organization in its application for a Class B bingo license and listed on the face of the Class B bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt organization holding either class of bingo license may conduct a session of bingo on a day other than that which appears on the face of the bingo license, provided that the conduct of the bingo session would not cause that exempt organization to exceed the session limits during any one calendar week set forth in this section for the class of bingo license held by that exempt organization or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the bingo license. ~~This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(b) Charity game ticket games shall be conducted during and in conjunction with a session of bingo and may only be conducted by the same exempt organization conducting the session of bingo and at the same location where the bingo session is being conducted. The number of sessions of bingo conducted by an exempt

organization at which charity game ticket games may be conducted shall be limited to one session per week for those exempt organizations operating with a Class A charity game ticket game license and two sessions per week for those exempt organizations operating with a Class B charity game ticket game license.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§ 14-309.9. Bingo and charity game ticket game prizes.**

(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of ~~bingo~~ bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is ~~one thousand five hundred dollars ($1,500).~~ three thousand five hundred dollars ($3,500), excluding cash or merchandise that may be offered or paid for charity game tickets sold during the session in charity game ticket games. Prizes in cash or merchandise that may be offered or paid for a jackpot bingo game shall be excluded from this maximum aggregate amount. ~~Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.

(d) The maximum prize in cash or merchandise that may be offered or paid for any one charity game ticket is one hundred dollars ($100.00).

(e) The maximum prize in cash or merchandise that may be offered or paid for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§ 14-309.10. Operation of ~~bingo.~~ bingo and charity game ticket games.**

The operation of bingo games and the sale of charity game ticket games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the exempt organization in the manner provided by the rules of the exempt organization."

Section 7. G.S. 14-309.11 reads as rewritten:

"**§ 14-309.11. ~~Accounting~~ Accounting, enforcement, and use of proceeds.**

(a) All funds received in connection with a bingo game or charity game ticket game shall be placed in a separate bank account. No funds may be disbursed from this account except the exempt organization may expend proceeds for prizes,

advertising, utilities, and the purchase of supplies and equipment used in playing ~~bingo,~~ bingo and the sale of charity game ticket games, taxes and license fees related to bingo and the sale of charity game ticket games and the payment of compensation as authorized by G.S. 14-309.7(c) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law enforcement agency~~ at a time directed by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;
(2) The location and date at which each bingo game was conducted and the prize awarded;
(3) The gross receipts of each bingo game;
(4) The cost or amount of any prize given at each bingo game;
(5) The amount paid in prizes at each ~~session;~~ session of bingo;
(6) The net return to the exempt organization; and
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(b1) The audit shall also contain, on a separate form approved by the Department of Human Resources, the following information:

(1) The serial number of each charity game ticket game;
(2) The gross receipts of each charity game ticket game;
(3) The amount paid in prizes at each charity game ticket game; and
(4) The net return to the exempt organization from each charity game ticket game.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class 2 misdemeanor.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained

by an exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies or charity game tickets are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is gambling.**

A bingo game or charity game ticket game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game or charity game ticket game may be instituted as provided for in Chapter 19 of the General Statutes."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any exempt organization operating a bingo game or charity game ticket game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game or charity game ticket game open to the general public."

Section 10. G.S. 14-309.14 is repealed.

Section 11. To implement the transition in regulating charitable bingo from the prior law to the statutes made effective by this act, the Department of Human Resources shall issue transitional rules providing for the conversion of the licenses issued under the prior applicable laws and the new licenses required by this act. The rules shall provide, inter alia:

(1) That exempt organizations licensed on the effective date of this act may immediately apply for new licenses that shall expire when the licenses held on the effective date of this act would have expired;

(2) For the staggered expiration of licenses issued pursuant to this act; and

(3) For prorated payment of the new fees required by this act based on the expiration date of the license held on the effective date of this act.

The Department of Human Resources shall develop and issue the rules prior to October 1, 1997.

Section 12. Sections 11 and 12 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997.

# Senate Bill 893 - Bingo Regulations
# Proposed Committee Substitute

## Licensing Procedure

| | Licensed Exempt Organization (Charitable) | Commercial Bingo Operator |
|---|---|---|
| Application Fee | $300.00 per year | $500.00 per year |
| Application Requirements | | |
| •Name and address of applicant | YES | YES |
| •Copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is tax exempt and thus an exempt organization | YES | NO (Private, for-profit games not run by a tax exempt organization) |
| •Name and home address of each member of organization's special committee which conducts bingo. | YES | NO (Private, for-profit games not run by special bingo committee of a tax exempt organization) |
| •Location at which the applicant will conduct bingo games. | YES | YES |
| •A copy of the lease or rental agreement if location for conduct of bingo games is leased. | YES | YES |
| •Listing of the day or days of the week and the time of day when the applicant will conduct bingo games | YES | YES |

## Accounting and Use of Proceeds

| | Licensed Exempt Organization (Charitable) | Commercial Bingo Operator |
|---|---|---|
| Yearly Audit Requirements | | |
| •Number of bingo games conducted. | YES | YES |
| •Location and date at which each bingo game was conducted and the prize awarded. | YES | YES |
| •Gross receipts of each bingo game. | YES | YES |
| •Cost or amount of any prize given at each bingo game. | YES | YES |
| •Amount paid in prizes at each session of bingo. | YES | YES |
| •Net return to the licensed exempt organization or commercial bingo operator. | YES | YES |

| | Licensed Exempt Organization (Charitable) | Commercial Bingo Operator |
|---|---|---|
| •Disbursements from the separate bingo account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee. | YES | YES |
| Use of net proceeds after the payment of prizes and expenses, funds remaining in the separate commercial bingo account. | Funds inure to the licensed exempt organization for charitable purposes only. | Funds inure to commercial bingo operator as private profit. |

## Operation of Bingo

| | Licensed Exempt Organization (Charitable) | Commercial Bingo Operator |
|---|---|---|
| Session Limits | Maximum of two (2) sessions per week, six (6) hours each | Maximum of five (5) sessions per week, seven (7) hours each. |
| Prize Limits | $500 maximum per bingo game<br>$3,500 maximum aggregate per session.<br>$2,500 maximum per session (Jackpot game). | $10 maximum per commercial bingo game.<br>No maximum aggregate per session. |

## Penalties

| | Licensed Exempt Organization (Charitable) | Commercial Bingo Operator |
|---|---|---|
| Operate without a license | Class I felony | Class I felony |
| Operate while license revoked or suspended | Class I felony | Class I felony |
| Exceeding session limits | Class I felony & license suspension or revocation | Class I felony & license suspension or revocation |
| Exceeding prize limits | Class I felony & license suspension or revocation | Class I felony & license suspension or revocation |
| Willfully filing false audit report | Class I felony & license suspension or revocation | Class I felony & license suspension or revocation |

Prepared by
North Carolina Charitable Bingo Association
5 West Hargett Street, Suite 508
Raleigh, NC 27601

VISITOR REGISTRATION SHEET

J. Committee — 6-17-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Jim Mila | Relf |
| Woody West | Broughton, Wilkins : West |
| Chris Carter | Carter & Assoc |
| Dawn Wall | C.C.F.B.B. |
| Blanche Ernesty | — CCFBB |
| Mitchell Ensley | CCFBB |
| L. J. Sullivan | — CC FBB |
| Edith Sullivan | — CCFBB |
| Ken Mullins | CCFBB |
| Darla B. Hewett | CCFBB |
| David L. Maxwell | All American Bingo Supply Co. Inc. |
| David Clayton | CCFBB |
| Marshall Zimmerman | CCFBB |
| L J Kidd | CCFBB |
| Rich Reddick | DOJ Lobbyist |
| Tom Dixon | NC REVENUE |
| Earl Davis | Optional Clerk |
| Pat Graves | CC FBB |
| Wesley Sanders | DOR |
| Leigh House | Conf of DA's |
| THOMAS STEINBURG | CCFBB |

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 17, 1997**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| George Reed | Cherokee Tribal Council |
| G.G. Shopshire | Legislation Ch. American Leg. Aux |
| Lee Parrott | |
| Ed Bedsgaard | Charity Bingo |
| Ben Whaley | Moose Lodge |
| Rosalinda Hevia | Beach Bingo |
| Bill Alexander | N.C. PBA |
| Caroline Jenkins | Public Viewer |
| Cathy Wells | " " |
| Carolyn Garcia | Public viewer |
| Tom Lutzler | Rocky Mount Telegram |
| Bill Scoggin | NCBA |
| Randall Stroud | Bryant, Patterson, Covington & Idol |
| Boswell Senter | DHR - Bingo |
| Joanne Sheppard | PTR |
| Diane A. Gray | DOJ |
| Bobbie Davis | Rmt Chamber of Commerce |
| Linda Smith | Viewer |
| Jennie McCullers | Viewer |
| Christina Shippie | Viewer |
| Shirley Anthony | Viewer Beach Bingo |
| Kenneth M. Hill | Beach Bingo |
| [illegible] | Policy Intern - Governor's office |
| [illegible] | CALDWELL CO. SPEAKER Beach BINGO |
| Julian Jenkins | TARHEEL BINGO |
| Wayne Miller | TARHEEL Bingo |

## VISITOR REGISTRATION SHEET

**Senate Judiciary Committee** — **April 17, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Stacey Parker | intern - Sen. Odom |
| Anne Dixon | NCBA |
| | |
| | |
| |

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**JUNE 19, 1997**

The Senate Judiciary Committee met on Thursday, June 19, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Neely to explain **House Bill 977** - AN ACT TO REPEAL THE REQUIREMENT THAT NOTARIES PUBLIC OBTAIN THE RECOMMENDATION OF A PUBLICLY ELECTED OFFICIAL.

Senator Shaw moved to adopt a Proposed Committee Substitute to House Bill 977 for discussion. The motion carried by voice vote.

Walker Reagan, Committee Counsel, was recognized to answer questions from the Committee.

Senator Winner moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Weinstein was recognized to continue the discussion of **Senate Bill 893** - AN ACT TO REGULATE CHARITABLE BINGO.

Senator Winner moved to adopt a Proposed Committee Substitute (#006) for discussion. The motion carried by voice vote.

The following people were recognized to speak on the bill:

John Palicastro, representing the N. C. Charitable Bingo Association
Otis Carter - Concerned Citizens for Beach Bingo (attachments #'s 1 and 2)
Wood Webb - Lobbyist for Beach Bingo

Senator Lucas moved to appoint a subcommittee to study the bill. The motion carried by voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 19, 1997

| | | |
|---|---|---|
| SB 763 | Crime Victim's Rights Act | Cooper |
| SB 893 | Regulating Charitable Bingo | Weinstein |
| HB 997 | Notary Commission Amendment | Neely |

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.

# North Carolina General Assembly
## Legislative Services Office

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

E[illegible]. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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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


June 19, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 997 - NOTARY COMMISSION AMENDMENTS** - Representative Neely

The Proposed Senate Committee Substitute for House Bill 997 deletes the requirement that an applicant to become 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. The bill would also expand the applicability of the notarial curative statute from acts performed prior to December 31, 1996 to acts performed prior to June 1, 1997.

Section 1 of the bill becomes effective October 1, 1997 and applies to applications submitted on or after that date. Section 2 of the bill becomes effective when the bill becomes law.

H997-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-19
SENATE BILL 95

AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~October 1, 1991.~~ December 31, 1996."

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

In the General Assembly read three times and ratified this the 1st day of April, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:45 p.m. this 11th day of April, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H997-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 997
THIS IS A DRAFT 18-JUN-97 16:45:36
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Notary Commission Amendment. (Public)

Sponsors:

Referred to:

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 AND TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE JUNE 1, 1997.

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. 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, and applies to all initial applications submitted on or after that date. The remainder of this act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Monday, June 23, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **997** Notary Commission Amendment

| | |
|---|---|
| Draft Number: | PCS 6281 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

# SENATE BILL 893

Short Title: Regulating Charitable Bingo. (Public)

Sponsors: Senators Weinstein; Ballance, Carpenter, Cochrane, Conder, Cooper, Dalton, Kincaid, Ledbetter, Odom, Soles, and Warren.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHARITABLE BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

"**§ 14-309.5. Bingo.**

(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified ~~herein;~~ in this Part; that the only justification for this Part is to support ~~such~~ these charitable, nonprofit causes; and ~~such~~ this purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.

(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction ~~such~~ the licensed exempt organization and any person affiliated, in any way, with the licensed exempt organization shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting

services to any licensee. If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.

(c) It is lawful for an exempt organization to conduct charity game ticket games in accordance with the provisions of this Part. Any licensed exempt organization that conducts a charity game ticket game in violation of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction, that exempt organization shall not conduct a bingo game or charity game ticket game for a period of one year. It is lawful to participate in a charity game ticket game conducted pursuant to this Part. It shall be a Class I felony for any person:

(1) To sell or otherwise furnish charity game tickets other than in a charity game ticket game conducted by a licensed exempt organization in accordance with the provisions of this Part;

(2) To operate a charity game ticket game without a license;

(3) To operate a charity game ticket game while a license is revoked or suspended;

(4) To willfully misuse or misapply any moneys received in connection with any charity game ticket game;

(5) To contract with or provide consulting services to any licensee.

If the Department of Human Resources finds that any licensed exempt organization that conducts a charity game ticket game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a charity game ticket game conducted in accordance with this Part."

Section 2. G.S. 14-309.6 reads as rewritten:

"**§ 14-309.6. Definitions.**

For purposes of this Part, the term:

(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on ~~such~~ the cards conforming to a predetermined pattern of ~~numbers (but shall not include "instant bingo" which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~ numbers;

(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.

(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:

a. The county police force; or

b. The county sheriff's office in a county with no county police force;

(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force;

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid ~~license.~~ license;

(8) 'Charity game ticket' means a folded or banded ticket or card with perforated break-open tabs, made completely of paper or paper products, the face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prizewinners with the maximum amount which can be charged for each card being fifty cents (50¢);

(9) 'Charity game ticket game' means the sale of a separate package or series of packages consisting of one complete set of charity game tickets in which all tickets in the set bear the same serial number; and

(10) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo in which a player must cover a specified number of spaces to win."

Section 3. G.S. 14-309.7 reads as rewritten:

"**§ 14-309.7. Licensing procedure.**

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) for a Class A bingo license and three hundred dollars ($300.00) for a Class B bingo license to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. ~~This~~ Each class of bingo license shall expire one year after the granting of the license. ~~This~~ Each class of bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(a1) An exempt organization may not operate a charity game ticket game at a location without a license. Application for a charity game ticket game license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of two hundred dollars ($200.00) for a Class A charity game ticket game license and three hundred dollars ($300.00) for a Class B charity game ticket game license to defray the cost of issuing charity game ticket game licenses, handling charity game ticket game audit reports, and regulating the operation of charity game ticket games. An exempt organization shall hold a Class A or Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class A charity game ticket game license. An exempt organization shall hold a Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class B charity game ticket game license. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. Each class of charity game ticket game license shall expire one year after the granting of the license. Each class of charity game ticket game license may be renewed yearly, if the applicant pays the application fee and files an audit

with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law enforcement agency in the county or municipality in which the licensee intends to operate before charity game ticket games are conducted in conjunction with a bingo game conducted by the licensee. The day or days of the week and the time of day charity game ticket games are conducted by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played or charity game ticket games are conducted.

(b) Each application and renewal application for a Class A or Class B bingo license and a Class A or Class B charity game ticket game license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games and charity game ticket games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. ~~Such~~ The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the

purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of an exempt organization. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings ~~must~~ shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and ~~one-quarter percent (1 1/4%)~~ one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game ~~must~~ shall be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. ~~It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

(d) Conduct of a bingo game or raffle under this Part on ~~such~~ that property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.

(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require ~~such~~ any information ~~as~~ that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. ~~Such~~ The report may require ~~such~~ any information ~~as~~ that is

reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided ~~such~~ that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. An exempt organization conducting only an annual or semiannual bingo game under this subsection may not apply for a charity game ticket game license, conduct charity game ticket games, or sell or furnish charity game tickets in any manner at any time. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

(a) The number of sessions of bingo conducted ~~or sponsored~~ by an exempt organization shall be limited to one session per week for those exempt organizations operating with a Class A bingo license and two sessions per week for those exempt organizations operating with a Class B bingo license and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same exempt organization. An exempt organization operating with a Class A bingo license may conduct a bingo session only on the day of the week and at the time of day selected by that exempt organization in its application for a Class A bingo license and listed on the face of the Class A bingo license issued by the Department. An exempt organization operating with a Class B bingo license may conduct bingo sessions only on one or more of the two days and at the time of day selected by that exempt organization in its application for a Class B bingo license and listed on the face of the Class B bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt organization holding either class of bingo license may conduct a session of bingo on a day other than that which appears on the face of the bingo license, provided that the conduct of the bingo session would not cause that exempt organization to exceed the session limits during any one calendar week set forth in this section for the class of bingo license held by that exempt organization or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the bingo license. ~~This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(b) Charity game ticket games shall be conducted during and in conjunction with a session of bingo and may only be conducted by the same exempt organization conducting the session of bingo and at the same location where the bingo session is being conducted. The number of sessions of bingo conducted by an exempt

organization at which charity game ticket games may be conducted shall be limited to one session per week for those exempt organizations operating with a Class A charity game ticket game license and two sessions per week for those exempt organizations operating with a Class B charity game ticket game license.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§ 14-309.9. Bingo and charity game ticket game prizes.**

(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of ~~bingo~~ bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is ~~one thousand five hundred dollars ($1,500).~~ three thousand five hundred dollars ($3,500), excluding cash or merchandise that may be offered or paid for charity game tickets sold during the session in charity game ticket games. Prizes in cash or merchandise that may be offered or paid for a jackpot bingo game shall be excluded from this maximum aggregate amount. ~~Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.

(d) The maximum prize in cash or merchandise that may be offered or paid for any one charity game ticket is one hundred dollars ($100.00).

(e) The maximum prize in cash or merchandise that may be offered or paid for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§ 14-309.10. Operation of ~~bingo.~~ bingo and charity game ticket games.**

The operation of bingo games and the sale of charity game ticket games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the exempt organization in the manner provided by the rules of the exempt organization."

Section 7. G.S. 14-309.11 reads as rewritten:

"**§ 14-309.11. ~~Accounting~~ Accounting, enforcement, and use of proceeds.**

(a) All funds received in connection with a bingo game or charity game ticket game shall be placed in a separate bank account. No funds may be disbursed from this account except the exempt organization may expend proceeds for prizes,

advertising, utilities, and the purchase of supplies and equipment used in playing ~~bingo,~~ bingo and the sale of charity game ticket games, taxes and license fees related to bingo and the sale of charity game ticket games and the payment of compensation as authorized by G.S. 14-309.7(c) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law enforcement agency~~ at a time directed by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;
(2) The location and date at which each bingo game was conducted and the prize awarded;
(3) The gross receipts of each bingo game;
(4) The cost or amount of any prize given at each bingo game;
(5) The amount paid in prizes at each ~~session;~~ session of bingo;
(6) The net return to the exempt organization; and
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(b1) The audit shall also contain, on a separate form approved by the Department of Human Resources, the following information:

(1) The serial number of each charity game ticket game;
(2) The gross receipts of each charity game ticket game;
(3) The amount paid in prizes at each charity game ticket game; and
(4) The net return to the exempt organization from each charity game ticket game.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class 2 misdemeanor.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained

by an exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies or charity game tickets are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is gambling.**

A bingo game or charity game ticket game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game or charity game ticket game may be instituted as provided for in Chapter 19 of the General Statutes."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any exempt organization operating a bingo game or charity game ticket game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game or charity game ticket game open to the general public."

Section 10. G.S. 14-309.14 is repealed.

Section 11. To implement the transition in regulating charitable bingo from the prior law to the statutes made effective by this act, the Department of Human Resources shall issue transitional rules providing for the conversion of the licenses issued under the prior applicable laws and the new licenses required by this act. The rules shall provide, inter alia:

(1) That exempt organizations licensed on the effective date of this act may immediately apply for new licenses that shall expire when the licenses held on the effective date of this act would have expired;

(2) For the staggered expiration of licenses issued pursuant to this act; and

(3) For prorated payment of the new fees required by this act based on the expiration date of the license held on the effective date of this act.

The Department of Human Resources shall develop and issue the rules prior to October 1, 1997.

Section 12. Sections 11 and 12 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997.

Attachment #1
Adopted June 17, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S893-CSRV-005
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 893
THIS IS A DRAFT 16-JUN-97 18:32:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Bingo Regulations. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REGULATION OF CHARITABLE BINGO AND TO REGULATE COMMERCIAL BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 309.5 reads as rewritten:

"§ 14-309.5. Charitable Bingo.

~~(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified herein; that the only justification for this Part is to support such charitable, nonprofit causes; and such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.~~

~~(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any~~

~~licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction such person shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting services to any licensee. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.~~

(a) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization, or any person who is employed by a licensed exempt organization, who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor unless a greater penalty is prescribed for the offense in question. Upon conviction neither the person nor the licensed exempt organization shall conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part.

(b) If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any applicable provision of this Part, the Secretary, or the Secretary's designee, may immediately suspend the license of that licensed exempt organization for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence.

(c) It shall not constitute a violation of any State law for a licensed exempt organization to advertise a bingo game conducted in accordance with this Part."

Section 2. G. S. 14-309.6 reads as rewritten:

"§ 14-309.6. Definitions.

For purposes of this Part, the term:

~~(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term "exempt organization" means the local branch or chapter operating the bingo game);~~

~~(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~

~~(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.~~

~~(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:~~

~~a. The county police force; or~~

~~b. The county sheriff's office in a county with no county police force;~~

~~(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the~~

~~corporate limits of a municipality having a police force;~~

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

~~(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid license.~~

(1) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on the cards conforming to a predetermined pattern of numbers and the game is completed when one individual card conforms to the predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);

(2) 'Commercial bingo games' means any bingo game other than one conducted by a licensed exempt organization or any bingo game conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes for which admission is charged for a bingo session at which a bingo game is played or for which a person is charged to play a bingo game.

(3) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit

volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(4) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo conducted by a licensed exempt organization in which a player must cover a specified number of spaces to win;

(5) 'Licensed commercial bingo operator' means any person or entity licensed pursuant to G.S. 14-309.14 to conduct commercial bingo games and any employee or agent of such person or entity engaged in the conduct of commercial bingo games on behalf of or under the direction of such person or entity;

(6) 'Licensed exempt organization' means an exempt organization which possesses a currently valid license pursuant to G.S. 14-309.7; and

(7) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force. For any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force, 'local law-enforcement agency' means the county police force or the county sheriff's office in a county with no county police force."

Section 3. G.S. 14-309.7 reads as rewritten:

"§ 14-309.7 Licensing ~~procedure.~~ procedure for exempt organizations; limited occasion permits.

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ three hundred dollars ($300.00) to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and

regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by a licensed exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(b) Each application and renewal application shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

~~(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. Such pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings must be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and one-quarter percent (1 1/4%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game must be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General~~

~~Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

~~(d) Conduct of a bingo game or raffle under this Part on such property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.~~

~~(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require such information as is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. Such report may require such information as is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided such arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision.~~

(c) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require any information that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require

more information than is required in subsection (b) of this section for application for a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. The report may require any information that is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as provided in this subsection, all provisions of this Part applicable to licensed exempt organizations shall apply to any exempt organization operating a bingo game under a limited occasion permit."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

The number of sessions of bingo conducted ~~or sponsored~~ by ~~an~~ a licensed exempt organization shall be limited to two sessions per week and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same licensed exempt organization. A licensed exempt organization may conduct a bingo session only on the day or days of the week and at the time of day selected by that exempt organization in its application for a bingo license and listed on the face of the bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt

organization may conduct a session of bingo on a day other than that which appears on the face of the license, provided that the conduct of the bingo session would not cause that licensed exempt organization to exceed the session limits during any one calendar week set forth in this section or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the license. This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes. Any person who violates this section shall be guilty of a Class I felony."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§14-309.9. Bingo prizes.**

~~(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of bingo is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is one thousand five hundred dollars ($1,500). Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

~~(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.~~

~~(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(a) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one game of bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00).

(b) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided

that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo.

(c) The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid by a licensed exempt organization at any one session of bingo is three thousand five hundred dollars ($3,500). Any winner of a prize for any one bingo game must be paid that prize before the commencement of another bingo game. Prizes in cash or merchandise that may be offered or paid by a licensed exempt organization for a jackpot bingo game shall be excluded from this maximum aggregate amount.

(d) It is a Class I felony for any person to offer or receive a prize in cash or merchandise greater than:

(1) five hundred dollars ($500.00) for any one bingo game operated by a licensed exempt organization;

(2) five hundred dollars ($500.00) in exchange for a prize offered or received in cash or merchandise for any one bingo game operated by a licensed exempt organization;

(3) two thousand five hundred dollars ($2,500) for any one jackpot bingo game operated by a licensed exempt organization; or

(4) two thousand five hundred dollars ($2,500) in exchange for a prize offered or received in cash or merchandise for any one jackpot bingo game operated by a licensed exempt organization.

(e) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 6. G.S. 14-309.10 reads as rewritten:

"§14-309.10. Operation of ~~bingo.~~ bingo, conduct of games for licensed exempt organizations, qualified premises.

(a) The operation of bingo games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the licensed exempt organization in the manner provided by the rules of the exempt organization.

(b) In order for a licensed exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this

member to be responsible for the receiving, reporting and depositing of all revenues received, the licensed exempt organization may pay one member for conducting a bingo game. The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of a licensed exempt organization.

(c) Except as provided in G.S. 14-309.7(c), a licensed exempt organization may hold a bingo game only in or on property owned either legally or equitably by the organization or leased by the organization from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to. The total monthly rental shall be an amount not to exceed one and one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein, including the playing of bingo for a period of not less than one year and actually occupied and used by that exempt organization on a regular basis for purposes other than bingo for at least six months before the game. All equipment used by the exempt organization in conducting the bingo game shall be owned by the organization.

(d) Unless the exempt organization leases the property in accordance with subsection (c) of this section, a licensed exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. Conduct of a bingo game or raffle under this section shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes."

Section 7. G.S. 14-309.11 reads as rewritten:

"§ 14-309.11. ~~Accounting~~ Licensed exempt organizations; accounting, enforcement, and use of proceeds.

(a) All funds received in connection with a bingo game conducted by a licensed exempt organization shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed exempt organization may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used [in conducting the raffle and] in playing bingo, taxes and license fees related to bingo and the payment of compensation as authorized by ~~G.S. 14-309.7(c)~~ G.S. 14-309.10(b) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law-enforcement agency~~ at a time directed

by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;

(2) The location and date at which each bingo game was conducted and the prize awarded;

(3) The gross receipts of each bingo game;

(4) The cost or amount of any prize given at each bingo game;

(5) The amount paid in prizes at each ~~session;~~ session of bingo;

(6) The net return to the exempt organization; and

(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a ~~Class 2 misdemeanor.~~ Class I felony.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained by a licensed exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is ~~gambling.~~ gambling; penalties.**

(a) A bingo game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game

may be instituted as provided for in Chapter 19 of the General Statutes.

(b) It shall be a Class I felony for any person:

(1) to operate any bingo game without a license;

(2) to operate any bingo game while license is revoked or suspended;

(3) to willfully misuse or misapply any moneys received in connection with any bingo game;

(4) to contract with or provide consulting services in connection with a bingo game to any licensed exempt organization; or

(5) to operate commercial bingo games at a location at which an exempt organization is licensed to conduct bingo games."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any licensed exempt organization operating a bingo game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game open to the general public."

Section 10. G.S. 14-309.14 reads as rewritten:

"**§ 14-309.14. ~~Beach bingo.~~ Commercial bingo.**

~~Nothing in this Article shall apply to "beach bingo" games except for the following subdivisions:~~

~~(1) No beach bingo game may offer a prize having a value greater than ten dollars ($10.00). Any person offering a greater than ten-dollar ($10.00) but less than fifty-dollar ($50.00) prize is guilty of a Class 2 misdemeanor. Any person offering a prize of fifty dollars ($50.00) or greater is guilty of a Class I felony.~~

~~(2) No beach bingo game may be held in conjunction with any other lawful bingo game, with any "promotional bingo game", or with any offering of an opportunity to obtain anything of value, whether for valuable consideration or not. No beach bingo game may offer free bingo games as a promotion, for prizes or otherwise. Any person who violates this subsection is guilty of a Class I felony.~~

~~(3) G.S. 18B-308 shall apply to beach bingo games.~~

~~(4) Upon conviction under any provision of this section, such person shall not conduct a bingo game for a period of at least one year.~~

(a) It is lawful for any person to conduct commercial bingo games in accordance with the provisions of this Part. Any person who conducts a commercial bingo game in violation of any applicable provision of this Part shall be guilty of a Class I felony. Upon conviction such person shall not conduct a bingo game for a period of one year.

(b) No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the commercial bingo game activities of a licensed commercial bingo operator.

(c) If the Department of Human Resources finds that any licensed commercial bingo operator who conducts a commercial bingo game is in violation of any applicable provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed commercial bingo operator may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a commercial bingo game conducted in accordance with this Part."

Section 11. Part 2 of Article 37 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-309.14A. Licensing procedure for commercial bingo games; qualified premises.**

(a) No person may operate a commercial bingo game at a location without a commercial bingo license. Application for a commercial bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of five hundred dollars ($500.00) to defray the cost of issuing commercial bingo licenses, handling commercial bingo audit reports, and regulating the operation of commercial bingo games. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This commercial bingo license shall expire one year after the granting of the license. This commercial bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.14D(b). A copy of the application and commercial bingo license shall be furnished to the local law enforcement agency in the county or municipality in which the licensed commercial bingo operator intends to operate before commercial bingo is conducted by the licensee. The day or days of the week and the time of day a session of commercial bingo shall be operated by a licensed commercial bingo operator shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is played.

(b) Each application and renewal application for a commercial bingo license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation or other similar legal entity, the name and home address of each of the officers of the entity as well as the name and address of the directors, or other persons similarly situated, of the entity.

(2) The location at which the applicant will conduct the commercial bingo games. If the premises are leased, a copy of the lease or rental agreement.

(3) The day or days of the week on which the applicant will conduct the commercial bingo games.

(4) The time of day at which the applicant will begin a commercial bingo session and the time of day by which the commercial bingo session will end.

(c) A licensed commercial bingo operator may hold a commercial bingo game only in or on property owned either legally or equitably by the licensed commercial bingo operator or leased by the licensed commercial bingo operator from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms, and not movable or of a temporary nature such as a tent or lean-to. All equipment used by the licensed commercial bingo operator in conducting the commercial bingo game shall be owned by the commercial bingo operator.

**§ 14-309.14B. Limit of Sessions of Commercial Bingo.**

(a) The number of sessions of commercial bingo conducted by a licensed commercial bingo operator shall be limited to five sessions per week and these sessions shall not exceed seven hours each per session. No two seasons of commercial bingo shall be held within a 15-hour period of time. A licensed commercial bingo operator may conduct a commercial bingo session only on the days of the week and at the time of day selected by that licensed commercial bingo operator in its application for a commercial bingo license and listed on the face of the commercial bingo license. Upon 10 days' prior notice to the Department of Human Resources, a licensed commercial bingo operator may conduct a session of commercial bingo on a day other than that which appears on the face of the commercial bingo license, provided that the conduct of the commercial bingo session would not cause that licensed commercial bingo operator to exceed the session limits during any one calendar week set forth in this section. A separate notice shall be required by the Department of Human Resources for each commercial bingo session which will be conducted on a day other than that which appears on the face of the commercial bingo license.

**§ 14-309.14C. Commercial Bingo Prizes.**

(a) The maximum prize in cash or merchandise that may be offered by a licensed commercial bingo operator for any one commercial bingo game is ten dollars ($10.00). Any winner of a prize for any one commercial bingo game must be paid that prize before the commencement of another commercial bingo game. No commercial bingo game may be held in conjunction with any other lawful bingo game, with any 'promotional bingo game', or with any offering of an opportunity to obtain anything of value, whether

for consideration or not. No commercial bingo game may offer free commercial bingo games as a promotion, for prizes or otherwise.

(b) No person shall offer or receive a prize in cash or merchandise greater than ten dollars ($10.00) for any one commercial bingo game. No person shall offer or receive cash or merchandise greater than ten dollars ($10.00) in exchange for a prize offered or received in cash or merchandise for any one commercial bingo game.

(c) Any person who violates this section shall be guilty of a Class I felony.

**§ 14-309.14D. Commercial bingo; accounting, enforcement, and use of proceeds.**

(a) All the funds received in connection with a commercial bingo game shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed commercial bingo operator may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used in playing commercial bingo, taxes and license fees related to bingo and the payment of compensation and for the purposes set forth below for the remaining proceeds. These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the licensed commercial bingo operator.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources at a time directed by the Department of Human Resources. Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class I felony. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of commercial bingo games conducted by the licensed commercial bingo operator;

(2) The location and date at which each commercial bingo game was conducted and the prize awarded;

(3) The gross receipts of each commercial bingo game;

(4) The cost or amount of any prize given at each commercial bingo game;
(5) The amount paid in prizes at each session of commercial bingo;
(6) The net return to the licensed commercial bingo operator;
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee; and
(8) The name and address of all employees or agents conducting commercial bingo games during the reporting period on behalf of or under the direction of the person or entity listed as the applicant in the application for a commercial bingo license.

(c) All books, papers, records and documents relevant to determining whether a licensed commercial bingo operator or an employee of a licensed commercial bingo operator has acted or is acting in compliance with this section shall be maintained by the licensed commercial bingo operator for three years and shall be open to inspection by the law enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General or his designee, or any local law enforcement agency may conduct inspections of premises where commercial bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section.

(d) G.S. 18B-308 shall apply to commercial bingo games."

Section 10. From funds appropriated to the Department of Human Resources for the 1997-98 fiscal year and from fees received pursuant to this act, the Department shall hire two bingo field inspectors to assist with the regulation of commercial bingo and the enhanced enforcement of regulation of charitable bingo mandated by this act. A bingo field inspector shall perform duties as a designee of the Secretary of Human Resources.

Section 11. This act becomes effective December 1, 1997 and applies to offenses occurring on or after that date.

Adopted June 19 '97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S893-CSRV-006
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 893
THIS IS A DRAFT 18-JUN-97 18:16:09
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Bingo Regulations. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE REGULATION OF CHARITABLE BINGO AND TO REGULATE COMMERCIAL BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

"**§ 14-309.5. Charitable Bingo.**

~~(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified herein; that the only justification for this Part is to support such charitable, nonprofit causes; and such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.~~

~~(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any~~

~~licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction such person shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting services to any licensee. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.~~

(a) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization, or any person who is employed by a licensed exempt organization, who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor unless a greater penalty is prescribed by law for the offense in question. Upon conviction neither the person nor the licensed exempt organization shall conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part.

(b) If the Department of Human Resources finds that any licensed exempt organization that conducts a bingo game is in violation of any applicable provision of this Part, the Secretary, or the Secretary's designee, may immediately suspend the license of that licensed exempt organization for at least 30 days. Within 30 days from the date of suspension, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence.

(c) It shall not constitute a violation of any State law for a licensed exempt organization to advertise a bingo game conducted in accordance with this Part."

Section 2. G. S. 14-309.6 reads as rewritten:

"§ 14-309.6. Definitions.

For purposes of this Part, the term:

~~(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term "exempt organization" means the local branch or chapter operating the bingo game);~~

~~(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~

~~(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.~~

~~(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:~~

~~a. The county police force; or~~

~~b. The county sheriff's office in a county with no county police force;~~

~~(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the~~

~~corporate limits of a municipality having a police force;~~

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

~~(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid license.~~

(1) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on the cards conforming to a predetermined pattern of numbers and the game is completed when one individual card conforms to the predetermined pattern of numbers (but shall not include 'instant bingo' which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);

(2) 'Commercial bingo game' means any bingo game other than one conducted by a licensed exempt organization or any bingo game conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes for which admission is charged for a bingo session at which a bingo game is played or for which a person is charged to play a bingo game.

(3) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit

volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(4) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo conducted by a licensed exempt organization in which a player must cover a specified number of spaces to win;

(5) 'Licensed commercial bingo operator' means any person or entity licensed pursuant to G.S. 14-309.14A to conduct commercial bingo games and any employee or agent of such person or entity engaged in the conduct of commercial bingo games on behalf of or under the direction of such person or entity;

(6) 'Licensed exempt organization' means an exempt organization that possesses a currently valid license pursuant to G.S. 14-309.7; and

(7) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force. For any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force, 'local law-enforcement agency' means the county police force or the county sheriff's office in a county with no county police force."

Section 3. G.S. 14-309.7 reads as rewritten:

"§ 14-309.7 Licensing ~~procedure.~~ procedure for exempt organizations; limited occasion permits.

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ three hundred dollars ($300.00) to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and

regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by a licensed exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(b) Each application and renewal application shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

~~(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. Such pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings must be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and one-quarter percent (1 1/4%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game must be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General~~

~~Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

~~(d) Conduct of a bingo game or raffle under this Part on such property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.~~

~~(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require such information as is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. Such report may require such information as is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided such arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision.~~

(c) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require any information that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require

more information than is required in subsection (b) of this section for application for a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement agency a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. The report may require any information that is reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. Except as provided in this subsection, all provisions of this Part applicable to licensed exempt organizations shall apply to any exempt organization operating a bingo game under a limited occasion permit."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

The number of sessions of bingo conducted ~~or sponsored~~ by ~~an~~ a licensed exempt organization shall be limited to two sessions per week and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same licensed exempt organization. A licensed exempt organization may conduct a bingo session only on the day or days of the week and at the time of day selected by that exempt organization in its application for a bingo license and listed on the face of the bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt

organization may conduct a session of bingo on a day other than that which appears on the face of the license, provided that the conduct of the bingo session would not cause that licensed exempt organization to exceed the session limits during any one calendar week set forth in this section or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the license. This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes. Any person who violates this section shall be guilty of a Class I felony."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§14-309.9. Bingo prizes.**

~~(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of bingo is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is one thousand five hundred dollars ($1,500). Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

~~(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.~~

~~(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(a) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one game of bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00).

(b) The maximum prize in cash or merchandise that may be offered or paid by a licensed exempt organization for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided

that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo.

(c) The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid by a licensed exempt organization at any one session of bingo is three thousand five hundred dollars ($3,500). Any winner of a prize for any one bingo game must be paid that prize before the commencement of another bingo game. Prizes in cash or merchandise that may be offered or paid by a licensed exempt organization for a jackpot bingo game shall be excluded from this maximum aggregate amount.

(d) It is a Class I felony for any person to offer or pay a prize in cash or merchandise greater than:

(1) Five hundred dollars ($500.00) for any one bingo game operated by a licensed exempt organization;

(2) Five hundred dollars ($500.00) in exchange for a prize offered or paid in cash or merchandise for any one bingo game operated by a licensed exempt organization;

(3) Two thousand five hundred dollars ($2,500) for any one jackpot bingo game operated by a licensed exempt organization; or

(4) Two thousand five hundred dollars ($2,500) in exchange for a prize offered or paid in cash or merchandise for any one jackpot bingo game operated by a licensed exempt organization.

(e) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§14-309.10. Operation of ~~bingo.~~ bingo, conduct of games for licensed exempt organizations, qualified premises.**

(a) The operation of bingo games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the licensed exempt organization in the manner provided by the rules of the exempt organization.

(b) In order for a licensed exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this

member to be responsible for the receiving, reporting and depositing of all revenues received, the licensed exempt organization may pay one member for conducting a bingo game. The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the purpose of conducting a bingo game.

(c) A person shall not participate in the operation or conduct of the bingo activities of a licensed exempt organization if the person:

(1) Has been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering;

(2) Has been convicted of or pleaded nolo contendere to any illegal gambling activity; or

(3) Has forfeited bond for not appearing while charged with any of the offenses set out in subdivisions (1) and (2) of this subsection.

(d) Except as provided in G.S. 14-309.7(c), a licensed exempt organization may hold a bingo game only in or on property owned either legally or equitably by the organization or leased by the organization from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms, and not movable or of a temporary nature such as a tent or lean-to. The total monthly rental shall be an amount not to exceed one and one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein, including the playing of bingo for a period of not less than one year and actually occupied and used by that exempt organization on a

regular basis for purposes other than bingo for at least six months before the game. All equipment used by the exempt organization in conducting the bingo game shall be owned by the organization.

(e) Unless the exempt organization leases the property in accordance with subsection (d) of this section, a licensed exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. Conduct of a bingo game or raffle under this section shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes."

Section 7. G.S. 14-309.11 reads as rewritten:

"§ 14-309.11. ~~Accounting~~ Licensed exempt organizations; accounting, enforcement, and use of proceeds.

(a) All funds received in connection with a bingo game conducted by a licensed exempt organization shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed exempt organization may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used [in conducting the raffle and] in playing bingo, taxes and license fees related to bingo and the payment of compensation as authorized by ~~G.S. 14-309.7(c)~~ G.S. 14-309.10(b) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law-enforcement agency~~ at a time directed by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;

(2) The location and date at which each bingo game was conducted and the prize awarded;

(3) The gross receipts of each bingo game;

(4) The cost or amount of any prize given at each bingo game;

(5) The amount paid in prizes at each ~~session;~~ session of bingo;

(6) The net return to the exempt organization; and

(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a ~~Class 2 misdemeanor.~~ Class I felony.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained by a licensed exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General or his designee, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"§ 14-309.12. Violation is ~~gambling.~~ gambling; penalties.

(a) A bingo game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game may be instituted as provided for in Chapter 19 of the General Statutes.

(b) It shall be a Class I felony for any person:

(1) To operate any bingo game without a license when a license is required by law;

(2) To operate any bingo game while the license to operate the bingo game is revoked or suspended;

(3) To willfully misuse or misapply any moneys received in connection with any bingo game;

(4) To contract with or provide consulting services in connection with a bingo game to any licensed exempt organization; or

(5) to operate commercial bingo games at a location at which an exempt organization is licensed to conduct bingo games."

Section 9. G.S. 14-309.13 reads as rewritten:

"§ 14-309.13. Public sessions.

Any licensed exempt organization operating a bingo game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game open to the general public."

Section 10. G.S. 14-309.14 reads as rewritten:

"§ 14-309.14. ~~Beach bingo.~~ Commercial bingo.

~~Nothing in this Article shall apply to "beach bingo" games except for the following subdivisions:~~

~~(1) No beach bingo game may offer a prize having a value greater than ten dollars ($10.00). Any person offering a greater than ten-dollar ($10.00) but less than fifty-dollar ($50.00) prize is guilty of a Class 2 misdemeanor. Any person offering a prize of fifty dollars ($50.00) or greater is guilty of a Class I felony.~~

~~(2) No beach bingo game may be held in conjunction with any other lawful bingo game, with any "promotional bingo game", or with any offering of an opportunity to obtain anything of value, whether for valuable~~

~~consideration or not. No beach bingo game may offer free bingo games as a promotion, for prizes or otherwise. Any person who violates this subsection is guilty of a Class I felony.~~

~~(3) G.S. 18B-308 shall apply to beach bingo games.~~

~~(4) Upon conviction under any provision of this section, such person shall not conduct a bingo game for a period of at least one year.~~

(a) It is lawful for any person to conduct commercial bingo games in accordance with the provisions of this Part. Any person who conducts a commercial bingo game in violation of any applicable provision of this Part shall be guilty of a Class I felony. Upon conviction such person shall not conduct a bingo game for a period of one year.

(b) A person shall not participate in the operation or conduct of the commercial bingo game activities of a licensed commercial bingo operator if the person:

(1) Has been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering;

(2) Has been convicted of or pleaded nolo contendere to any illegal gambling activity; or

(3) Has forfeited bond for not appearing while charged with any of the offenses set out in subdivisions (1) and (2) of this subsection.

(c) If the Department of Human Resources finds that any licensed commercial bingo operator who conducts a commercial bingo game is in violation of any applicable provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days from the date of suspension, the licensed commercial bingo operator may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a

violation of any State law to advertise a commercial bingo game conducted in accordance with this Part."

Section 11. Part 2 of Article 37 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"§ 14-309.14A. Licensing procedure for commercial bingo games; qualified premises.

(a) No person may operate a commercial bingo game at a location without a commercial bingo license. Application for a commercial bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of five hundred dollars ($500.00) to defray the cost of issuing commercial bingo licenses, handling commercial bingo audit reports, and regulating the operation of commercial bingo games. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. This commercial bingo license shall expire one year after the granting of the license. This commercial bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.14D(b). A copy of the application and commercial bingo license shall be furnished to the local law enforcement agency in the county or municipality in which the licensed commercial bingo operator intends to operate before commercial bingo is conducted by the licensee. The day or days of the week and the time of day a session of commercial bingo shall be operated by a licensed commercial bingo operator shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is played.

(b) Each application and renewal application for a commercial bingo license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation or other similar legal entity, the name and home address of each of the officers of the entity as well as the name and address of the directors, or other persons similarly situated, of the entity.

(2) The location at which the applicant will conduct the commercial bingo games. If the premises are leased, a copy of the lease or rental agreement.

(3) The day or days of the week on which the applicant will conduct the commercial bingo games.

(4) The time of day at which the applicant will begin a commercial bingo session and the time of day by which the commercial bingo session will end.

(c) A licensed commercial bingo operator may hold a commercial bingo game only in or on property owned either legally or equitably by the licensed commercial bingo operator or leased by the licensed commercial bingo operator from the owner or bona fide property management agent; no subleasing is permitted. The buildings shall be of a permanent nature with approved plumbing for bathrooms, and not movable or of a temporary nature such as a tent or lean-to. All equipment used by the licensed commercial bingo operator in conducting the commercial bingo game shall be owned by the commercial bingo operator.

"**§ 14-309.14B. Limit on sessions of commercial bingo.**

(a) The number of sessions of commercial bingo conducted by a licensed commercial bingo operator shall be limited to five sessions per week and these sessions shall not exceed seven hours each per session. No two sessions of commercial bingo shall be held within a 15-hour period of time. A licensed commercial bingo operator may conduct a commercial bingo session only on the days of the week and at the time of day selected by that licensed commercial bingo operator in its application for a commercial bingo license and listed on the face of the commercial bingo license. Upon 10 days' prior notice to the Department of Human Resources, a licensed commercial bingo operator may conduct a session of commercial bingo on a day other than that which appears on the face of the commercial bingo license, provided that the conduct of the commercial bingo session would not cause that licensed commercial bingo operator to exceed the session limits during any one calendar week set forth in this section. A separate notice shall be required by the Department of Human Resources for each commercial bingo session which will be conducted on a day other than that which appears on the face of the commercial bingo license.

"**§ 14-309.14C. Commercial bingo prizes.**

(a) The maximum prize in cash or merchandise that may be offered or paid by a licensed commercial bingo operator for any one commercial bingo game is ten dollars ($10.00). Any winner of a prize for any one commercial bingo game must be paid that prize before the commencement of another commercial bingo game. No commercial bingo game may be held in conjunction with any other lawful bingo game, with any 'promotional bingo game', or with any offering of an opportunity to obtain anything of value, whether for consideration or not. No commercial bingo game may offer free commercial bingo games as a promotion, for prizes or otherwise.

(b) No person shall offer or pay a prize in cash or merchandise greater than ten dollars ($10.00) for any one commercial bingo game. No person shall offer or pay cash or merchandise greater than ten dollars ($10.00) in exchange for a prize offered or paid in cash or merchandise for any one commercial bingo game.

(c) Any person who violates this section shall be guilty of a Class I felony.

"**§ 14-309.14D. Commercial bingo; accounting, enforcement, and use of proceeds.**

(a) All the funds received in connection with a commercial bingo game shall be placed in a separate bank account. No funds may be disbursed from this account except the licensed commercial bingo operator may expend proceeds for prizes, advertising, utilities, and the purchase of supplies and equipment used in playing commercial bingo, taxes and license fees related to bingo and the payment of compensation and for the purposes set forth below for the remaining proceeds. These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the licensed commercial bingo operator.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources at a time directed by the Department of Human Resources. Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class I felony.

The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of commercial bingo games conducted by the licensed commercial bingo operator;

(2) The location and date at which each commercial bingo game was conducted and the prize awarded;

(3) The gross receipts of each commercial bingo game;

(4) The cost or amount of any prize given at each commercial bingo game;

(5) The amount paid in prizes at each session of commercial bingo;

(6) The net return to the licensed commercial bingo operator;

(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee; and

(8) The name and address of all employees or agents conducting commercial bingo games during the reporting period on behalf of or under the direction of the person or entity listed as the applicant in the application for a commercial bingo license.

(c) All books, papers, records and documents relevant to determining whether a licensed commercial bingo operator or an employee of a licensed commercial bingo operator has acted or is acting in compliance with this section shall be maintained by the licensed commercial bingo operator for three years and shall be open to inspection by the law enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General or his designee, or any local law enforcement agency may conduct inspections of premises where commercial bingo is conducted or bingo equipment and supplies are stored and inspect the records of any registrant to ensure compliance with this section.

(d) G.S. 18B-308 shall apply to commercial bingo games."

Section 10. From funds appropriated to the Department of Human Resources for the 1997-98 fiscal year and from fees

received pursuant to this act, the Department shall hire two bingo field inspectors to assist with the regulation of commercial bingo and the enhanced enforcement of regulation of charitable bingo mandated by this act. A bingo field inspector shall perform duties as a designee of the Secretary of Human Resources.

Section 11. This act becomes effective December 1, 1997 and applies to offenses occurring on or after that date.

Attachment #2

# SB 893 - PROPOSED COMMITTEE SUBSTITUTE

## [BINGO]

PROBLEM PROVISIONS

Charity Bingo ("Charity")
Commercial Bingo ("Commercial")

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|---|---|
| Page 2, §14-309.5(a)<br>(Lines 14-19) | General violations:<br>Misdemeanor for Charity<br>Felony for Commercial<br>**UNFAIR** |
| Page 2, §14-309.5(b)<br>(Lines 23-28) | NC DHR may shut down Charity for at least 30 days without recourse.<br>**UNFAIR** |
| Page 4, §14-309.6(1)<br>(Lines 16-17) | Game completed when one card has bingo.<br>**IMPOSSIBLE TO REGULATE BECAUSE THERE MAY BE MORE THAN ONE WINNER.** |
| Page 9, §14-309.8<br>(Lines 39-40, pages 10, lines 1-6) | 10 day notice requirement to change days or operation.<br>**IMPRACTICAL AND UNREASONABLE BECAUSE OF UNFORESEEN WEATHER.** |
| Page 10, §14-309.9(b)<br>(Lines 35-36) | Charity Jackpot prize for one game = $2,500.00<br>**EXCESSIVE INCREASE FROM $500.00 TO $2,500.00 INJURING OR ELIMINATING SMALL CHARITY OPERATIONS.** |
| Page 11, §14-309.9(c)<br>(Lines 6-7) | Maximum total prizes for Charity increased from $1,500.00 to $3,500.00 [Plus $2,500.00 for Jackpot game]-Total payout = $6,000.00<br>**EXCESSIVE PAYOUT INJURING OR ELIMINATING SMALL CHARITY OPERATIONS.** |

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| Page 11, §14-309.9(c)<br>(Lines 7-9) | Prize winner must be paid before beginning new game.<br>**IMPRACTICALLY SLOWS PROGRESSION OF GAMES- REDUCES OVERALL REVENUE FOR CHARITY OPERATIONS.** |
| Page 14, §14-309.11(c)<br>(Line 21) | Provision of false information raised from misdemeanor to felony.<br>**EXCESSIVE AND UNJUSTIFIED** |
| Page 15, §14-309.12(b)<br>(Line 3) | Violation constitutes a felony.<br>**EXCESSIVE AND UNJUSTIFIED** |
| Page 16, §14-309.14(a)<br>(Lines 5-8) | Operation of $10.00 Commercial game in violation of <u>any</u> provision of law constitutes a felony.<br>**EXCESSIVE AND UNJUSTIFIED** |
| Page 16, §14-309.14(c)<br>(Lines 19-23) | NC DHR may shut down Commercial for at least 30 days without recourse.<br>**UNFAIR** |
| Page 17, §14-309.14A(a)<br>(Lines 5-6) | $500.00 license fee for Commercial as opposed to $300.00 for Charity.<br>**UNFAIR AND EXCESSIVE** |
| Page 17, §14-309.14A(b)(2)<br>(Lines 33-34) | Copy of lease for game premises to be furnished to NC DHR .<br>**UNREASONABLE (PURPOSE?)** |
| Page 18, §14-309.14A(c)<br>(Line 5) | No subleasing permitted.<br>**UNREASONABLE (PURPOSE?)** |
| Page 18, §14-309.14A(c)<br>(Lines 8-10) | All equipment used by Commercial operator must be owned. <u>If leased, operator is guilty of a felony!</u><br>**UNREASONABLE, EXCESSIVE AND PREPOSTEROUS** |
| Page 18, §14-309.14B(a)<br>(Lines 12-16) | Commercial games limited to 5 days per week; sessions must be 15 hours apart.<br>**UNREASONABLE WHEN PRIZES ARE LIMITED TO $10.00 PER GAME.** |

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| Page 18, §14-309.14B(a)<br>(Lines 21-27) | 10 day notice requirement to change days of operation.<br>**IMPRACTICAL AND UNREASONABLE BECAUSE OF UNFORSEEN WEATHER.** |
| Page 18, §14-309.14C(a)<br>(Lines 35-37) | Prize winner must be paid before beginning of new game.<br>**UNREASONABLE TO HOLD GAME UP. PRIZES SHOULD BE ALLOWED TO BE PAID DURING NEXT GAME (PURPOSE?)** |
| Page 19, §14-309.14C(b)<br>(Lines 4-9) | Felony for receiving more than $10.00 prize.<br>**UNREASONABLE AND EXCESSIVE** |
| Page 19, §14-309.14D(a)<br>(Lines 14-21) | All funds must be placed in separate bank account and disbursed accordingly.<br>**EXCESSIVE ACCOUNTING REGULATION WHICH IS UNNECESSARY FOR $10.00 COMMERCIAL GAMES (PURPOSE?)** |
| Page 19, §14-309.14D(a)<br>(Lines 21-22) | Disbursement must be made by consecutively numbered checks.<br>**INORDINATELY UNREASONABLE (FOR EXAMPLE, 20 WINNERS ON ONE $10.00 GAME REQUIRE 20 CONSECUTIVELY NUMBERED CHECKS FOR 50¢ EACH).** |
| Page 20, §14-309.14D(b)(7)<br>(Lines 7-10) | Disbursements must be accompanied by purpose of disbursement, date and name and address of each payee.<br>**EXCESSIVE ACCOUNTING REGULATIONS WHICH IS UNNECESSARY AND OVERLY BURDENSOME FOR $10.00 COMMERCIAL GAMES (PURPOSE?)** |
| Page 20, §14-309.14D(d)<br>(Line 31) | G.S. 18B-308 prohibiting consumption or sale of alcohol applies solely to Commercial operations; silent as to Charity operations.<br>**IS IT THE INTENT TO ALLOW ALCOHOL TO BE CONSUMED AND SOLD DURING CHARITY GAMES?** |

# VISITOR REGISTRATION SHEET

**SENATE COMMITTEE ON EDUCATION/HIGHER EDUCATION**
**April 30, 1997**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Benny Lanier | NSPFA |
| Bernard Allen | SOS |
| Darla B. Hargett | C.C. F. B.B. |
| Karen Wall | C.C. F.B.B. |
| David R. Clayton | C C F B B |
| David L. Maxwell | All American Bingo Supply CO. Inc. 122- N Main St Spring Lake NC 28390 |
| Michael Beasley | C.C.F.B.B. |
| Blanche Ernesty | C.C.f. B.B. |
| THOMAS STEINBURG | CCFBB |
| Alan Miles | Barlow & Dixon LLP |
| Roy Todd | R&C BB Charlotte |
| Ann Jackson | R & C BB Charlotte |
| Deanne Winner | EGHDS |

# VISITOR REGISTRATION SHEET

**SENATE COMMITTEE ON ~~EDUCATION/HIGHER EDUCATION~~**
**~~April 30, 1997~~** Judiciary

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|---|
| Randall Stroud | Bryant, Patterson, Covington & Idol, P.A. Durham, NC |
| GEORGE HOERR, MD | SALEM PLASTIC SURGERY 175 CHARLES, WINSTON-SALEM NC |
| Joshua Stuppard | DHR/DFS |
| Bonnell Smith | DHR/DFS |
| Will Cherry | Intern Rep. Neely |
| Kenneth Calka | Beach Bingo |
| ERIC ZOGRY | NC SENTENCING COMMISSION |
| Diane W. Winn | NCBA |
| Rob Schofield | NCJOC |
| BILL SCOGGIN | NCBA |
| Rosalinde Hussin | Beach Bingo |
| TOM BRITT | BINGO |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JUNE 24, 1997

The Senate Judiciary Committee met on Tuesday, June 24, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Redwine to explain **House Bill 184** - AN ACT TO EXEMPT THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN FROM ARTICLE 2A OF THE ADMINISTRATIVE PROCEDURE ACT AND TO REQUIRE THE EMPLOYEE HOSPITAL AND MEDICAL BENEFITS COMMITTEE TO MEET AT LEAST QUARTERLY.

Senator Soles moved to give the bill a favorable report. The motion carried by voice vote.

Representative Ives and Senator Carpenter were recognized to explain **House Bill 176** - AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES.

Senator Rand moved to adopt a Proposed Committee Substitute for House Bill 176 for discussion. The motion carried by voice vote.

The Proposed Committee Substitute combines House Bill 176 and Senate Bill 530 - AN ACT TO ALLOCATE THE DUTIES OF ROLLER SKATING RINK OPERATORS AND THE DUTIES OF ROLLER SKATERS AT ROLLER SKATING RINKS AS THESE DUTIES RELATE TO SAFETY AND LIABILITY FOR PERSONAL INJURY.

Margie Rhodes, President of the N. C. Horse Council, was recognized to speak on the Proposed Committee Substitute.

Senator Soles moved to amend the Proposed Committee Substitute on Page 4, Lines 21 and 22 and inserting a new section. (Amendment attached.) No action was taken on the motion.

Senator Allran moved to amend the Proposed Committee Substitute on Page 6, Lines 9 and 30. (Amendment attached.) The motion carried.

Senator Cooper asked that further discussion on the Proposed Committee Substitute be continued at the next meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 24, 1997

| | | |
|---|---|---|
| {SB 313 | Public Assistance Fraud | Dannelly |
| {HB 431 | Public Assistance Fraud | Howard |
| SB 530 | Roller Skating Rink Liab. | Rand |
| HB 176 | Equine Activities Liab. | Ives |
| HB 184 | Exempt State Health Plan from APA | Redwine |
| HB 1094 | Repeal/Recodify Railroad Laws | Culpepper |

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June 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Linwood Jones, Counsel to the House Insurance Committee.

**RE:** **HOUSE BILL 184 - EXEMPT STATE HEALTH PLAN FROM THE RULE MAKING PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT -** Representative Redwine.

House Bill 184 would exempt the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan from the rule making provisions of the Administrative Procedures Act. This bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

This bill amends the Administrative Procedure Act (APA) by adding the State Employee's Health Plan to the list of six other agencies' processes that are exempt from the rule making requirements of the APA. All state agencies are required to adopt rules which affect the public by formal rule making process unless the agency, or the agency processes, are specifically exempt from these requirements.

Section 1 provides that the State Health Plan is exempt from rule making in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes. These Parts set forth the administrative structure and the benefits package of the Comprehensive Major Medical Plan.

Section 2 ensures more legislative oversight of the State Health Plan by requiring that the legislative Employee Hospital and Medical Benefits Committee meet at least quarterly, and by directing the Executive Administrator of the Plan to report to the Committee on any administrative or medical policies issued, as well as on benefit denials which are appealed to the Board of Trustees. The Employee Hospital and Medical Benefits Committee is charged with reviewing the operation of the Plan.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 3 is a conforming amendment that adds a sentence to G.S. 135-39.8 to clarify that rules adopted in accordance with that section are exempt from the provisions of Article 2A of Chapter 150B. G.S. 135-39.8 grants the Executive Administrator and Board of Trustees of the Plan authority to issue rules and regulations to administer the Plan.

Section 4 makes the act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 184

Short Title: Exempt State Health Plan From APA. (Public)

Sponsors: Representatives Redwine, Creech, Nichols, Mitchell, and Mercer.

Referred to: Insurance.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN FROM ARTICLE 2A OF THE ADMINISTRATIVE PROCEDURE ACT AND TO REQUIRE THE EMPLOYEE HOSPITAL AND MEDICAL BENEFITS COMMITTEE TO MEET AT LEAST QUARTERLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. -- Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.

(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes."

Section 2. G.S. 135-38(c) reads as rewritten:

"(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article. The Committee shall meet not less than once each quarter to review the actions of the Executive Administrator and Board of Trustees. At each meeting, the Executive Administrator shall report to the Committee on any administrative and medical policies which have been issued as rules and regulations in accordance with G.S. 135-39.8, and on any benefit denials, resulting from the policies, which have been appealed to the Board of Trustees."

Section 3. G.S. 135-39.8 reads as rewritten:

"**§ 135-39.8. Rules and regulations.**

The Executive Administrator and Board of Trustees may issue rules and regulations to implement Parts 2 and 3 of this Article. Rules and regulations adopted in accordance with this section are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. Rules and regulations of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written description of the rules and regulations issued under this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a rule or regulation, and to any other parties requesting a written description and approved by the Executive Administrator and Board of Trustees to receive a description on a timely basis."

Section 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, June 24, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **184** Exempt State Health Plan from APA
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 176
Committee Substitute Favorable 4/23/97

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

S 1

SENATE BILL 530

Short Title: Roller Skating Rink Liability. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOCATE THE DUTIES OF ROLLER SKATING RINK OPERATORS AND THE DUTIES OF ROLLER SKATERS AT ROLLER SKATING RINKS AS THESE DUTIES RELATE TO SAFETY AND LIABILITY FOR PERSONAL INJURY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99E.

"Roller Skating Rink Safety and Liability.

"**§ 99E-1. Findings.**

The General Assembly finds:

(1) Roller skating is a sport that is enjoyed on a regular basis by thousands of North Carolina families. It is an affordable sport and a form of exercise for young and old alike.

(2) The stable and efficient operation of roller skating rinks is essential in order to provide a safe and supervised area for roller skaters to practice their sport.

(3) Liability insurance for roller skating rink operators is difficult to find and expensive to maintain.

(4) The number of insurance providers who are willing to issue liability insurance is shrinking, causing a rise in premiums on the insurance that is available.

(5) Roller skating rinks in North Carolina primarily are operated by small, independent businessmen who simply do not have the financial means to pay increasing liability premiums.

(6) Lack of insurance coverage adversely affects the roller skating rink owners as well as patrons who may suffer personal injury due to accidents on the premises of the roller skating rink.

(7) The wholesome and healthy family activity of roller skating should be encouraged.

**"§ 99E-2. Definitions.**

As used in this Chapter:

(1) 'Operator' means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.

(2) 'Roller skater' means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. 'Roller skater' includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.

(3) 'Roller skating rink' means a building, facility, or premises that provides an area specifically designed to be used by the public for recreational or competitive roller skating.

(4) 'Spectator' means an individual who is present in a roller skating rink only for the purpose of observing recreational or competitive roller skating.

**"§ 99E-3. Duties of an operator.**

The operator, to the extent practicable, shall:

(1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Chapter in conspicuous places in at least three locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.

(3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.

(4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.

(5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.

(6) Maintain in good condition the railings, kickboards, and wall surrounding the skating surface.

(7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.

(8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.
(9) Provide reasonable security in parking areas during operational hours.
(10) Inspect emergency lighting units periodically to ensure the lights are in proper order.
(11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.
(12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.
(13) Prohibit the sale or use of alcoholic beverages on the premises.
(14) Comply with all applicable State and local safety codes.

**"§ 99E-4. Duties of a roller skater.**

Each roller skater shall:

(1) Maintain reasonable control of his or her speed and course at all times.
(2) Heed all posted signs and warnings.
(3) Maintain a proper outlook to avoid other roller skaters and objects.
(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.
(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person.

**"§ 99E-5. Assumption of risk.**

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injuries that:

(1) Result from incidental contact with other roller skaters or spectators,
(2) Result from falls caused by loss of balance, and
(3) Involve objects or artificial structures properly within the intended path of travel of the roller skater,

and that are not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99E-3.

**"§ 99E-6. Defense to suit.**

Assumption of risk pursuant to G.S. 99E-5 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99E-3."

Section 2. This act becomes effective October 1, 1997, and applies to causes of actions arising on or after that date.

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June 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Tim Hovis, House Judiciary II Committee Co-Counsel.

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 176 - EQUINE ACTIVITIES AND SKATING RINK LIABILITY -** Representative Ives.

The Proposed Senate Committee Substitute for House Bill 176 would provide immunity from certain liability claims arising from the inherent risks of equine activities and roller skating rinks.

**Section 1** of the bill creates a new Chapter 99E which provides immunity from liability for personal injury to a participant in equine activities.

G.S. 99E-1 contains various definitions. "Engage in an equine activity" does not including being a spectator unless the spectator places himself in an unauthorized area and in immediate proximity to the equine activity. "Equine activity" includes a broad list of horse-related activities including riding, participating in programs involving horses, training, boarding, inspecting, participating in shows, fairs and other organized activities, hoof trimming and horse shoeing, medical treatment, and agricultural activities. An "equine sponsor" includes those conducting activities for profit, as well as nonprofit. "Equine professional" includes 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. 99E-2 provides that an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, is not liable for personal injuries of a participant resulting from inherent risks of equine activity unless the person knew or

should have known that equipment was faulty, the ability of the participant was not determined, the person willfully and wantonly disregarded the safety of the participant, or the person was otherwise negligent. In addition, this section does not prevent or limit liability under the provisions "set forth in the product liability laws."

G.S. 99E-3 requires signs designed by the Department of Agriculture be maintained in a clearly visible location where equine activities occur 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 must also contain this notice. Failure to post the signs or provide the notice results in no protection from this Chapter.

**Section 2** of the bill creates the Roller Skating Rink Safety and Liability Act which would define the responsibilities and liabilities of roller skating rink operators and roller skaters and would create an assumption of the inherent risks of roller skating.

G.S. 99F-1 defines operator of a roller skating rink, roller skater, roller skating rink, and spectator.

G.S. 99F-2 provides a detailed list of the duties of the operator of a rink. These duties include posting applicable rules and operator's liabilities, complying with safety standards, furnishing supervisory personnel, prohibiting alcoholic beverages, complying with State and local safety codes, and not engaging in willful or negligent conduct proximately causing injury.

G.S. 99F-3 defines the duties of a roller skater including maintain control, heeding signs and warnings, maintaining a proper outlook, knowing the range of ability, refraining from acting dangerously.

G.S. 99F-4 establishes an assumption of risk arising from roller skating to risk that are obvious and necessary. This inherent risks include injuries from contact with others, falls, and collisions with structures in the path of travel not otherwise attributable to the operator's breach of duties.

G.S. 99F-5 establishes that assumption of risk under G.S. 99F-4 is a complete defense to suit against an operator by a skater or spectator for injuries resulting obvious and necessary inherent risks, unless the operator has violated the operator's duties.

The bill becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

H176-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 176
THIS IS A DRAFT 23-JUN-97 14:32:34
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Equine Activities/Skating Rink Liability. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES AND TO CLARIFY THE DUTIES OF ROLLER SKATING RINK OPERATORS AND SKATERS AT ROLLER SKATING RINKS RELATING TO LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"CHAPTER 99E.

"Equine Activity Liability.

"§ 99E-1. 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 engaged in any one or more of the following:
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.
e. Hooftrimming or placing or replacing horseshoes on an equine.
(6) 'Inherent risks of equine activities' means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:
a. The possibility of an equine behaving 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.
Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.
(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.

"**§ 99E-2. Liability.**

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, 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 engaged in an equine activity 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 engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

(1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides 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 proximately caused the injury, damage, or death.

(4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) 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 engaged in an equine activity under liability provisions as set forth in the products liability laws.

"**§ 99E-3. 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. Chapter 99E 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. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99F.

"Roller Skating Rink Safety and Liability.

"§ 99F-1. Definitions.

As used in this Chapter:

(1) 'Operator' means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.

(2) 'Roller skater' means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. 'Roller skater' includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.

(3) 'Roller skating rink' means a building, facility, or premises that provides an area specifically designed to be used by the public for recreational or competitive roller skating.

(4) 'Spectator' means an individual who is present in a roller skating rink only for the purpose of

observing recreational or competitive roller skating.

"§ 99F-2. Duties of an operator.

The operator, to the extent practicable, shall:

(1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Chapter in conspicuous places in at least three locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.

(3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.

(4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.

(5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.

(6) Maintain in good condition the railings, kickboards, and wall surrounding the skating surface.

(7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.

(8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.

(9) Provide reasonable security in parking areas during operational hours.

(10) Inspect emergency lighting units periodically to ensure the lights are in proper order.

(11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.

(12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.

(13) Prohibit the sale or use of alcoholic beverages on the premises.

(14) Comply with all applicable State and local safety codes.

(15) Not engage willfully or negligently in any conduct that may proximately cause injury, damage, or death to a roller skater or spectator.

"§ 99F-3. Duties of a roller skater.

Each roller skater shall:

(1) Maintain reasonable control of his or her speed and course at all times.

(2) Heed all posted signs and warnings.

(3) Maintain a proper outlook to avoid other roller skaters and objects.

(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.

(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person.

"§ 99F-4. Assumption of risk.

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injury, damage, or death that:

(1) Results from incidental contact with other roller skaters or spectators,

(2) Results from falls caused by loss of balance, and

(3) Involves objects or artificial structures properly within the intended path of travel of the roller skater,

and that are not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99F-2.

"§ 99F-5. Defense to suit.

Assumption of risk pursuant to G.S. 99F-4 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99F-2."

Section 3. This act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

S.B. 530

H 795

CHAP. _____

# A BILL TO BE ENTITLED

AN ACT TO ALLOCATE THE DUTIES OF ROLLER SKATING RINK OPERATORS AND THE DUTIES OF ROLLER SKATERS AT ROLLER SKATING RINKS AS THESE DUTIES RELATE TO SAFETY AND LIABILITY FOR PERSONAL INJURY.

*Introduced by Senator(s)* Rand

*Principal Clerk's Use Only*

FILED MAR 26 1997

PASSED 1st READING

MAR 27 1997

AND REFERRED TO COMMITTEE

ON Judiciary

Combined w/ H 176

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 176-CSRU-001 DATE 6-24-97

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

Rep. ) Allran

Sen. )

moves to amend the bill on page 6, line 9

by deleting the word "outlook" and substituting the word "lookout";

and on page 6, line 30 by deleting the word "are" and substituting the word "is"

SIGNED Allran

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. 176 PCS 002 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep. ) Soles
)
Sen. )

moves to amend the bill on page 4, line S 21 + 22

( ) WHICH CHANGES THE TITLE

by INSERTING A NEW SECTION TO READ: "§ 99E-4. LIABILITY INSURANCE.

EVERY EQUINE ACTIVITY SPONSOR, EQUINE PROFESSIONAL, OR OTHER PERSON ENGAGED IN AN EQUINE ACTIVITY SHALL MAINTAIN IN FORCE AN INSURANCE LIABILITY POLICY IN AN AMOUNT OF NOT LESS THAN $50,000 PER PARTICIPANT."

AND ON PAGE 6, LINES 37 + 38,

BY INSERTING A NEW SECTION TO READ:

"§ 99F-6. LIABILITY INSURANCE.

EVERY OPERATOR SHALL MAINTAIN IN FORCE AN INSURANCE LIABILITY POLICY IN AN AMOUNT OF NOT LESS THAN $50,000 PER ROLLER SKATER OR SPECTATOR."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

# North Carolina Horse Council

F. Carlyle Teague, *Executive Director*

## CURRENT ECONOMIC IMPACT OF THE HORSE INDUSTRY

**NATIONALLY** - Survey conducted in 1994 by the American Horse Council

*** $112.1 billion impact on the U.S. economy
*** $ 25.3 billion value of goods and services - ranking with the apparel manufacturing and motion picture industries.
*** 7.1 million Americans involved in the horse industry.
*** 338,500 full time equivalent jobs.
*** 6.9 million horses.
*** $ 60,000 median income of horse owning families.
*** $ 1.9 billion in taxes to all levels of government.

**STATE WIDE** - base on limited NCDA survey of 1996

*** $533 million value of horses in North Carolina
*** Top 11 NC counties by horse population -
Guilford, Union, Mecklenburg, Wake, Rockingham, Forsyth, Iredell, Moore, Buncombe, Cumberland and Johnston.
*** 26,300 horse farms averaging 5 horses/farm.

**HUNT HORSE COMPLEX, Raleigh, NC** - 1991 based on formula related to 52 events over 145 days renting 11,182 stalls.

*** $ 13 million in tourism impact.

**WESTERN NC AGRICULTURAL CENTER, Fletcher, NC** - 1996 estimate

*** $ 10 million - direct impact on the local economy

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# EQUINE ACTIVITY LIABILITY BILL

Senate Bill 170 - House Bill 176

**Purpose:** Findings

- Equine activities may incur injuries as a result of risks involved in such activities
- The State and citizens derive numerous economic and personal benefits from such activities
- This Bill is necessary for the immediate preservation of the public peace, health and safety
- It is the intent of the General Assembly through this Bill to encourage equine activities by limiting civil liability of those involved in such activities

**Definitions**:

- This section defines the terms used throughout the Bill
- It lists all participants and the role of each involved in an equine activity
- Defines inherent risks of equine activities which include those dangers or conditions which are an integral part of equine activities

**Substance of the Bill:**

- It clearly states that nothing shall prevent or limit the liability of an equine sponsor, participant or professional who:
  - Provides faulty equipment
  - Provides an unsafe horse to an inexperienced rider, failing to match horse and rider
  - Dangerous facilities
  - Disregard for safety
  - Intentionally injures a participant
- It does nothing to change the current rights of a spectator at an equine activity or limit liability under provisions as set forth in the product liability laws.

**Warning required:**

At every location where an equine activity takes place, the sponsor shall post and maintain signs which contain the following warning:

> **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.
>
> NC Statutes, Article 67, Chapter 106

- Failure to comply with the requirements concerning warning signs and notices provided in this article shall prevent an equine sponsor, participant or professional from invoking the privileges provided in the Bill.

**Summary of Bill:**

- Defines up front what is negligence on part of owner
- Defines responsibility of operator and person participating in an equine activity
- Defines clearly that equine activities come with certain inherent risks
- Bill does **not** eliminate liability risks for any operator
- Bill would encourage safety by promoting the regular checking of equipment, grounds, buildings, etc
- Bill would help lower insurance rates on events and activities and encourage more persons to be involved in equine activities
- Similar laws are in place in 37 states
- Law, if passed, would become effective January 1, 1998

JAMES A. GRAHAM
COMMISSIONER

# State of North Carolina
## Department of Agriculture
## Raleigh

# Memorandum

To: Members of the Senate Judiciary Committee

From: James A. Graham
Commissioner of Agriculture

Date: June 18, 1997

Subject: H.176 - Equine Activities Liability

This bill is very important to the continued growth and development of the horse industry in North Carolina, and we need your support in getting this bill through the Senate.

The Department of Agriculture has a special interest in this legislation because we operate two major horse show facilities in Raleigh and Asheville, and we will soon be operating two more in Williamston and Lumberton.

We are in competition with facilities in other states in booking major horse events. Since at least 37 other states already have similar laws, North Carolina is at a competitive disadvantage in booking major horse events. This legislation is a selling point that horse show facility managers use in booking major events. Since our facilities are largely operated on revenues from shows and events, we must be competitive with other states.

Thank you for your consideration and support.

JAG:jm
H.176.com

VISITOR REGISTRATION SHEET

Judiciary Committee — June 24, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Bill Stobbold | NCDA |
| David McLeod | NCDA |
| Margie Rhodes | NC Horse Council |
| Donna Brown | NC Horse Co. |
| Barry Scarbro | NC Horse Council |
| Glenn Pettey | NC State Fair Hunt Horse Complex |
| T. Carlyle Deaver | NC Horse Council |
| Rob Schofield | NCJCDC |
| Charles Cromer | NCATL |
| ANNA TEFFT | OSBM |
| John Rustin | NCFPC |

**MINUTES**
**SENATE JUDICIARY COMMITTEE**
**JUNE 26, 1997**

The Senate Judiciary Committee met on Thursday, June 26, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Culpepper to explain **House Bill 1094** - AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND CLARIFYING CHANGES.

Senator Kerr moved to amend the bill on Page 6, Line 16 by deleting Section 11. The motion carried by voice vote. (Amendment attached.)

After further discussion by the Committee, Senator Odom recommended that the bill be withdrawn and taken up at next week's meeting.

Representative Howard was recognized to explain **House Bill 431** - AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

Senate Bill 313, sponsored by Senator Dannelly, is the companion bill for House Bill 431.

Senator Martin moved to adopt a Proposed Committee Substitute to House Bill 431 for discussion. The motion carried by voice vote.

Senator Martin moved to amend the Proposed Committee Substitute on Page 2, Line 39; Page 3, Line 33 and Page 5, Line 2. (Amendment attached.)

Angie McMillan, with the Department of Human Resources, was recognized to answer questions from the Committee.

After further discussion, Senator Cooper recommended that the Proposed Committee Substitute be withdrawn until next week's meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# June 26, 1997

| | | |
|---|---|---|
| SB 313 | Public Assistance Fraud | Dannelly |
| HB 431 | Public Assistance Fraud | Howard |
| HB 908 | Modify Rights of Decedent's Spouse | Baddour |
| HB 1023 | Pretrial Release & Bond Forfeiture | Baddour |
| HB 1094 | Repeal/Recodify Railroad Laws | Culpepper |

**North Carolina General Assembly**
**Legislative Services Office**

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(919) 733-2578

June 24, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 1094 - REPEAL/RECODIFY RAILROAD LAWS**
Representative Culpepper

House Bill 1094 would repeal obsolete or preempted provisions of the General Statutes affecting railroads, and make additional conforming and clarifying changes. The provisions regarding railroads are recodified from Chapter 62 (Public Utilities) to Chapter 136 (Roads and Highways). The bill would be effective when it becomes law.

**Sections 1-11 of the bill make various amendments to Chapter 62 of the General Statutes (Public Utilities) to delete provisions related to the regulation of railroads by the Utilities Commission, as follows:**

**Sections 1-3** of the bill amend the definitions of "common carrier", "private carrier", and "Public utility" as they are used in Chapter 62 of the General Statutes (Public Utilities). As amended in this bill, the terms would no longer include rail carriers.

**Section 4** of the bill repeals G.S. 133(h) regarding the Utilities Commission's lack of authority to entertain applications filed on behalf of rail carriers to fix rates for a single commodity or to fix rates for groups of commodities which constitute less than a general rate increase.

**Section 5** of the bill rewrites G.S. 62-150 to delete references to a "conductor" in the statute that authorizes the ticket agent of a common carrier to refuse to sell a ticket to an intoxicated person. A similar provision applicable to trains is being added to Chapter 136 by Section 16 of the bill.

**Section 6** of the bill rewrites G.S. 62-151 to delete references to a "conductor" and to a "driver of a train" in the statutes that permits the ejection of a passenger refusing to pay fare. A similar provision applicable to trains is being added to Chapter 136 by Section 16 of the bill.

**Section 7** of the bill rewrites G.S. 62-152.1(a)(2) to delete references to "carriers by rail" in the statute that provides for uniform rates and joint rate agreements among carriers subject to regulation by the Utilities Commission.

**Section 8** of the bill amends G.S. 62-190(a) to delete a reference to railroads in the statute regarding the rights conferred upon pipeline companies for the purpose of constructing and maintaining its pipelines and other works. Pipeline companies are currently given "all the rights and powers given railroads...by this Chapter...".

**Section 9** of the bill amends G.S. 62-200(b) regarding penalties for violation of a common carrier's duty to transport freight within a reasonable time. The bill deletes the portion of the law that provides for a penalty in the amount of $15 for the first day and $2 for each succeeding day of unlawful detention or neglect when a shipment is made in carload lots.

**Section 10** of the bill amends G.S. 62-300(a) to delete the authority of the Utilities Commission to receive and collect fees and charges from rail carriers for various regulated activities.

**Section 11** of the bill repeals G.S. 160A-195, which authorizes a city to regulate the speed at which trains may be operated within the corporate limits and requires that any such ordinance be filed with the Utilities Commission.

**Section 12** of the bill amends Chapter 14 by adding a new Article 61 entitled "Trains and Railroads". The new Article makes it a Class 3 misdemeanor to ride on a train without purchasing a ticket, and makes the unauthorized manufacture or transfer of switch-lock keys a Class 1 misdemeanor.

**Section 13** of the bill repeals the following provisions in Chapter 62 (Public Utilities) regarding railroads:

| | |
|---|---|
| GS 62-152 | Carriers to establish joint rates. |
| GS 62-192 | Map required for railroad condemnation. |
| GS 62-207 | Regulation of demurrage. |
| GS 62-221 | Engaging in unauthorized business. |
| GS 62-222 | Agreements for through freight and travel. |
| GS 62-227 | Change of route of railroad. |
| GS 62-228 | Obtaining temporary track across railroad. |
| GS 62-229 | Shelter at division points required; failure to provide a misdemeanor. |
| GS 62-230 | Maximum working hours and continuous service of employees; penalty; Commission to enforce. |

| | |
|---|---|
| GS 62-231 | Union depots required under certain conditions. |
| GS 62-232 | Construction of sidetracks. |
| GS 62-233 | Operation according to public schedule; certain trains and connections may be required |
| GS 62-234 | Commission may authorize operation of fast mail trains; discontinuance of passenger service |
| GS 62-238 | To require extension or contraction of railroad switching limits. |
| GS 62-238.1 | Ordinances regulating train speeds in municipalities filed with the Commission. |
| GS 62-239 | To fix rate of speed through municipalities; procedure. |
| GS 62-241 | Negligence presumed from killing livestock. |
| GS 62-242 | Liability of railroads for injuries to employees; fellow-servant rule; defective machinery; contributory negligence; assumption of risk; contracts void. |
| GS 62-243 | Violation of rules causing injury; damages. |
| GS 62-244 | Certain employees to wear badges. |
| GS 62-245 | Duty to receive and forward freight tendered; penalty; regulations; charges. |
| GS 62-246 | Partial charges for partial deliveries. |
| GS 62-247 | Commission to establish and regulate stations for freight and passengers; abandonment of station or other facility or diminution of accomodations. |

**Section 14** of the bill recodifies the remaining provisions of Article 11(Railroads) of Chapter 62. The effect is to remove the railroad provisions from the Public Utilities Chapter, and place them in a new Article 15 in Chapter 136 (Roads and Highways).

**Section 15** of the bill authorizes the Department of Transportation, rather than the Utilities Commission, to regulate railroad crossings.

**Section 16** of the bill provides that the ticket agent of a passenger train may refuse to sell a ticket to an intoxicated person; an intoxicated person who attempts to board a train after being forbidden by the conductor to do so is guilty of a Class 1 misdemeanor. The bill also provides that a passenger who refuses to pay the fare, or who becomes intoxicated or violates rules may be ejected.

**Section 17** makes the bill effective when it becomes law.

Statutes Repealed by HB 1094

GS 62-152

§62-152. Carriers to establish joint rates.

Any railroad is authorized and directed to enter into arrangements for the establishment of joint rates and through routes with common carriers by water and with other railroads for the transportation of persons and property transported wholly within the State of North Carolina, and it may, with approval of the Commission, establish such joint rates with common carriers by motor vehicle under the provisions of G.S. 62-146. (1931, c. 195; 1963, c. 1165, s. 1.)

GS 62-192

§62-192. Map required for railroad condemnation.

(a) Whenever it shall become necessary to condemn any land for the purposes of a railroad, at the time that the summons for such condemnation is served there shall also be served by the railroad company a map showing how the line of the road is to be located on the land sought to be condemned, and a profile showing the depth of the cuts and the height of the embankments on the land so sought to be condemned, and at what points on such land such cuts and embankments are to be located. This section shall not apply to street railways.

(b) Every railroad company shall, within a reasonable time after its road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and shall file the same in the office of the Commission. Every such map shall be drawn on a scale and on paper to be designated by the Commission, shall be certified and signed by the president or engineer of such company. (1871-2, c. 138, ss. 24, 41; Code, ss. 1952, 1977; 1893, c. 396, s. 2; 1901, c. 6, s. 3; Rev., ss. 2599, 2600; C.S., ss. 3471, 3472; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

§62-207. Regulation of demurrage.

(a) The Commission shall make rules and fix, establish or allow rates governing demurrage and storage charges by common carriers and shall make rules governing railroad companies in the placing of cars for loading and unloading.

(b) No common carrier doing business in the State shall make any charge on account of demurrage while a car or other equipment, whether the same be refrigerated or not, is being loaded for shipment, until such car or such other equipment has remained at the place of loading for a period of time in excess of that approved by the Commission as free time for such car or such other equipment.

(c) This section shall not apply to motor carriers of passengers. (1903, c. 342; Rev., s. 1100; Ex. Sess. 1913, c. 55; C.S., ss. 1057, 3527; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-221. Engaging in unauthorized business.

(a) It shall be unlawful for any railroad company incorporated under the laws of this State, or any railroad company incorporated under the laws of any other state and operating one or more railroads in this State, to engage in any business other than the business authorized by its or their charter.

(b) Any railroad company violating the provisions of this section shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be fined in the discretion of the court. (Ex. Sess. 1924, c. 80; 1963, c. 1165, s. 1; 1993, c. 539, s. 479; 1994, Ex. Sess., c. 24, s. 14(c).)

§62-222. Agreements for through freight and travel.

The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads and the rolling stock of such corporations or companies on such terms as may be agreed upon by them. (1866-7, c. 105; Code, s. 1995; Rev., s. 2640; C.S., s. 3447; 1963, c. 1165, s. 1.)

§62-227. Change of route of railroad.

The directors of any railroad corporation may by a vote of two thirds of their whole number at any time alter or change the route, or any part of the route, of their road, if it shall appear to them that the line can be improved thereby, and they shall have the same right and power to acquire title to any lands required for the purpose of the company in such altered or changed route, as if the road had been located there in the first instance; but no such alteration shall be made in any city or town after the road shall have been constructed, unless the same is sanctioned by a vote of two thirds of the corporate authorities of such city or town. In case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. When any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds or material contributed to the construction of the roadbed or its superstructure by those so interested by their contributions in the abandoned route or line. All the provisions of this Chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route. (1871-2, c. 138, s. 25; Code, s. 1953; 1889, c. 391; 1893, c. 396, s. 3; Rev., s. 2573; C.S., s. 3455; 1963, c. 1165, s. 1.)

§62-228. Obtaining temporary track across railroad.

Whenever any railroad line, track and right-of-way shall lie between any body of merchantable timber, quarry or other kind or class of heavy property requiring machinery for transportation and any body of navigable water over which such property could be floated or shipped, and the owner of such timber or property shall desire to transport such property to water for purposes of floating or shipping, such property owner shall have the right to file petition before the Commission for a right to cross such railroad with any other railroad track or tramway. The procedure for the hearing of the petition shall be the same as other proceedings of the Commission. The Commission shall hear the facts and if it be found reasonably necessary that the railroad track and right-of-way shall be crossed by a temporary railroad track, the Commission shall so order and prescribe the payment of the expense and the cost. (1931, c. 448; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

**§ 62-229. Shelter at division points required; failure to provide a misdemeanor.**

(a) It shall be the duty of every person that may now or hereafter own, control, or operate any line of railroad in this State, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleets, hot sunshine, and other inclement weather: Provided, the Commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

(b) Any person failing to comply with the requirements of this section shall be guilty of a Class 3 misdemeanor, and for each offense shall only be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Each day of such failure shall constitute a separate offense. (1913, cc. 65, 117; C.S., s. 6557; 1933, c. 134; 1941, c. 97; 1963, c. 1165, s. 1; 1993, c. 539, s. 482; 1994, Ex. Sess., c. 24, s. 14(c).)

§62-230. Maximum working hours and continuous service of employees; penalty; Commission to enforce.

(a) It shall be unlawful for any railroad company, its officers or agents, subject to this Article, to require or permit any employee, subject to this Article, to be or remain on duty for a longer period than 16 consecutive hours, and whenever any such employee of such railroad company shall have been continuously on duty for 16 hours he shall be relieved and not required or permitted again to go on duty until he has had at least 10 consecutive hours off duty; and no such employee who has been on duty 16 hours in the aggregate in any 24-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any 24-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than 13 hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a 24- hour period or not exceeding three days in any week: Provided further, the Commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

(b) Any such railroad company, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of this section shall be liable to a penalty of not to exceed five hundred dollars ($500.00) for each and every violation, to be recovered in suit or suits to be brought in the name of the State of North Carolina on relation of the Commission in the Superior Court of Wake County or of the county in which the violation of this Article occurred; and it shall be the duty of the said Commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one year from date of such violation; and it shall be the duty of said Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this Article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this Article shall not apply to any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this Article shall not apply to the crews of wrecking or relief trains.

(c) It shall be the duty of the Commission to execute and enforce the provisions of this Article, and all powers granted to the Commission are extended to it in the execution thereof. (1911, c. 112, ss. 2, 3, 4; C.S., ss. 6565, 6566, 6567; 1933, c. 134; 1941, c. 97; 1963, c. 1165, s. 1; 1973, c. 47, s. 2.)

**§62-231. Union depots required under certain conditions.**

The Commission is empowered and directed to require, when practicable, and when the necessities of the case, in its judgment, require, any two or more railroads which now or hereafter may enter any city or town to have one common or union passenger depot for the security, accommodation and convenience of the traveling public, and to unite in the joint undertaking and expense of erecting, constructing and maintaining such union passenger depot, commensurate with the business and revenue of such railroad companies or corporations, on such terms, regulations, provisions and conditions as the Commission shall prescribe. The railroads so ordered to construct a union depot shall have power to condemn land for such purpose, as in case of locating and constructing a line of railroad: Provided, that nothing in this section shall be construed to authorize the Commission to require the construction of such union depot should the railroad companies at the time of application for said order have separate depots, which, in the opinion of the Commission, are adequate and convenient and offer suitable accommodations for the traveling public. (1903, c. 126; Rev., s. 1097; C.S., s. 1042; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

**§62-232. Construction of sidetracks.**

The Commission is empowered and directed to require the construction of sidetracks by any railroad company to industries already established or to be established: Provided, it is shown that the proportion of such revenue accruing to such sidetrack is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the Commission authority to require railroad companies to construct sidetracks more than 500 feet in length. (1899, c. 164, s. 2, subsec. 15; Rev., s. 1097; C.S., s. 1044; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

**§62-233. Operation according to public schedule; certain trains and connections may be required.**

(a) Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.

(b) The Commission is empowered and directed to require, when practicable and when the necessities of the traveling public, in the judgment of the Commission, demand, that any railroad in this State shall install and operate one or more passenger or freight trains on its road, and also require any two or more railroads having intersecting points to make close connection at such points: Provided, that no order under this section shall be made unless the business of the railroad justifies it. (1871-2, c. 138, s. 35; Code, s. 1963; Rev., s. 2611; 1907, c. 469, s. 3; C.S., ss. 1045, 3475; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

**§62-234. Commission may authorize operation of fast mail trains; discontinuance of passenger service.**

The Commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday. The Commission shall have the power in any case in which the convenience and necessity of the traveling public do not require the running of passenger trains upon its railroad to authorize such railroad company to cease the operation of passenger trains as long as the convenience and necessity of the traveling public shall not require such operation. (1893, c. 97; Rev., s. 2614; C.S., s. 3481; 1933, c. 134, s. 8; c. 528; 1941, c. 97, s. 5; 1963, c. 1165, s. 1.)

**§62-238. To require extension or contraction of railroad switching limits.**

(a) The Commission may require, after notice and hearing to affected persons, the extension or contraction of the switching limits of any railroad or of any terminal or junction served by more than one railroad, in order to prevent discrimination or to serve the public convenience and necessity.

(b) The boundaries of switching limits which have been or may be established hereunder shall be boundaries to be observed by the railroad company, carrier or carriers whether or not the traffic moving into said boundaries or out of said boundaries is either interstate or intrastate in character.

(c) The failure or refusal of any railroad company, carrier or carriers to conform to or obey any decision, rule, regulation or order made by the Commission under the provisions of this section shall subject said railroad company, carrier or carriers refusing or failing to comply herewith to a penalty of five hundred dollars ($500.00); and each day that such failure or refusal to conform to or obey any decision, rule, regulation or order of the Commission shall subject said railroad company, carrier or carriers to a separate and distinct penalty of five hundred dollars ($500.00), the same to be certified to and prosecuted by the Attorney General. (1947, c. 1075, ss. 1-4; 1963, c. 1165, s. 1.)

§ 62-239. To fix rate of speed through municipalities; procedure.

(a) If a railroad company is of the opinion that an ordinance of a municipality through which a line of its railroad passes regulating the speed at which trains may run while passing through said municipality is unreasonable or oppressive, such railroad company may file its petition before the Commission, within 20 days of receipt of the certified copy of the ordinance limiting the speed of the trains within a city as required by G.S. 62-238.1(b), setting forth all the facts, and asking relief against such ordinance, and that the Commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, by registered or certified mail, to the mayor or chief officer of the town or municipality, together with a notice from the Commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the municipality named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the Commission shall hear the petition, but any hearing granted by the Commission shall be had at the municipality where the conditions complained of are alleged to exist, or some member of the said Commission shall take evidence, both for the petition and against it, at such municipality, and report to the full Commission before any decision is made by the Commission.

(b) If the Commission finds that such ordinance is reasonable and just the petition shall be dismissed, and the petitioner shall be taxed with the cost. If the Commission is of the opinion that the ordinance is unreasonable, it shall prescribe the maximum rates of speed for passing through such municipality. Thereafter, the railroad company may run its trains through such municipality at speeds not greater than those prescribed by the Commission, and the ordinance adjudged to be unreasonable shall not be enforced against such railroad company.

(c) If the judgment of the Commission is in favor of the petitioner, the Commission may make such order as to the payment of the costs as shall seem just. It may require either party to pay the same or it may divide the same. (1903, c. 552; Rev., ss. 1101, 1102, 1103; C.S., s. 1058; 1933, c. 134, s. 8; 1941, c. 97; 1957, c. 1152, s. 5; 1963, c. 1165, s. 1; 1985, c. 662, s. 2.)

**§62-238.1. Ordinances regulating train speeds in municipalities filed with the Commission.**

(a) When an ordinance limiting the speed of trains within the corporate limits of a municipality is enacted, pursuant to G.S. 160A-195, the city enacting the ordinance shall file with the Commission a certified copy of the ordinance plus one additional certified copy for each railroad corporation operating on the tracks through the affected city.

(b) The Commission shall mail a certified copy of each ordinance filed pursuant to subsection (a) of this section, by registered or certified mail with a return receipt requested, to the agent registered pursuant to G.S. 55-13 of each railroad corporation operating on the tracks through the affected city. Thereafter, the Commission shall notify the city of the date of receipt of the certified copy of the ordinance by the registered agent of each railroad corporation affected.

(c) No ordinance limiting train speed within the corporate limits of the city shall become effective until 20 days after the certified copies of the ordinance have been received by all of the registered agents of the railroads pursuant to subsection (b) of this section. (1985, c. 662, s. 1.)

**§62-241. Negligence presumed from killing livestock.**

When any cattle or other livestock shall be killed or injured by the engine or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the railroad company in any action for damages against such company: Provided, that no person shall be allowed the benefit of this section unless he shall bring his action within six months after his cause of action shall have accrued. (1856-7, c. 7; Code, s. 2326; Rev., s. 2645; C.S., s. 3482; 1963, c. 1165, s. 1.)

§62-242. Liability of railroads for injuries to employees; fellow-servant rule; defective machinery; contributory negligence; assumption of risk; contracts void.

(a) Any servant or employee of any railroad company operating in this State who shall suffer injury to his person or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company, by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.

(b) Every common carrier by railroad shall be liable in damages to any person suffering injury while he is employed by such carrier, or in the case of the death of such employee, to his or her personal representative, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engine, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(c) In all actions hereafter brought against any common carrier by railroad to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(d) In any action brought against any common carrier under or by virtue of any of the provisions of this section to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee, or the death or injury was caused by negligence.

(e) Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier by railroad to exempt itself from any liability created by this section, shall to that extent be void: Provided, that in any action brought against such common carrier, under and by virtue of any of the provisions of this section, such common carrier may set off therein any sum it has contributed or paid to any insurance or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which such action was brought.

(f) The provisions of this section relating to liability for damages shall also apply to logging roads and tramroads.

(g) The term "common carrier" as used in this section shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier. The term "employee" or "servant" as used in this section shall include any person carried on the payroll of such railroad company and

required to be on its property regardless of whether such person is receiving compensation at the time or not. (1897 (Pr.), c. 56; Rev., s. 2646; 1913, c. 6, ss. 1, 2, 3, 4, 5; 1915, c. 256; 1919, c. 275; C.S., ss. 3464, 3465, 3466, 3467, 3468, 3469, 3470; 1947, c. 916; 1963, c. 1165, s. 1.)

§62-243. Violation of rules causing injury; damages.

If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this Chapter shall be brought within one year after the commission of the alleged wrong or injury. (1899, c. 164, s. 16; Rev., s. 1091; C.S., s. 1110; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§62-244. Certain employees to wear badges.

Every conductor, baggagemaster, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office. (1871-2, c. 138, s. 30; Code, s. 1958; Rev., s. 2604; C.S., s. 3414; 1963, c. 1165, s. 1.)

§62-245. Duty to receive and forward freight tendered; penalty; regulations; charges.

(a) Agents or other officers of railroad companies whose duty it is to receive freight shall receive all articles of the nature and kind received by such carriers for transportation whenever tendered at a regular depot, station, terminal or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding. The railroad company shall forward such freight or cars by the route selected by the person tendering the freight under the existing laws. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.

(b) The Commission shall make reasonable and just rules:

(1) For the handling of freight and baggage at stations of all railroad companies.

(2) As to charges by any person engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations.

(c) The railroad company represented by any person unlawfully refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars ($50.00) for each day such carrier refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight. (Code, s. 1964; 1899, c. 164, s. 2, subsecs. 2, 7; 1903, cc. 444, 693; Rev., ss. 1094, 2631; C.S., ss. 1053, 3515; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1.)

§62-246. Partial charges for partial deliveries.

Whenever any freight of any kind shall be received by any railroad company in this State to be delivered to any consignee in this State, and a portion of the same shall not have been received at the place of destination, it shall not be lawful for such carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. Such carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interfering with or depriving a consignor, or other person having authority, of his rights of stoppage in transit. (1893, c. 495; Rev., s. 2641; C.S., s. 3521; 1963, c. 1165, s. 1.)

§62-247. Commission to establish and regulate stations for freight and passengers; abandonment of station or other facility or diminution of accommodations.

(a) The Commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations or terminals by any railroad company, to require the erection of depot accommodations commensurate with such business and revenue and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The Commission shall not require any railroad company to establish any station nearer to another station than five miles.

(b) The Commission is empowered and directed to require a change of any station or terminal or the repair, addition to, or change of any station or terminal by any railroad company in order to promote the security, convenience and accommodation of the public.

(c) A railroad company which has established and maintained for a year or more a passenger station, freight depot, team track, or other facility for serving the public at a point upon its road or route shall not abandon such station, depot or team track or other facility for serving the public nor substantially diminish the accommodations at said station, depot or team track by the stopping of trains or otherwise except by approval of the Commission which may be sought by the filing of an appropriate petition seeking the necessary authority. Freight or passenger depots may be relocated upon the written approval of the Commission. (1899, c. 164, s. 2, subsecs. 12, 13, ss. 19, 20; Rev., ss. 1097, 1098; 1913, c. 155; C.S., ss. 1040, 1041, 1051; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1971 c. 552, s. 2.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1094
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 6/4/97
Fourth Edition Engrossed 6/12/97

Short Title: Repeal/Recodify Railroad Laws. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(6) reads as rewritten:

"(6) 'Common carrier' means any ~~person~~ person, other than a carrier by rail, which holds itself out to the general public to engage in transportation of persons or household goods for compensation, including transportation by ~~train,~~ bus, truck, boat or other conveyance, except as exempted in G.S. 62-260."

Section 2. G.S. 62-3(22) reads as rewritten:

"(22) 'Private carrier' means any ~~person~~ person, other than a carrier by rail, not included in the definitions of common carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and

operated by such person other than the transportation of household goods for compensation."

Section 3. G.S. 62-3(23)a. reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;
3. Transporting persons or household goods by street, suburban or interurban bus ~~or railways~~ for the public for compensation;
4. Transporting persons or household goods by ~~railways or~~ motor ~~vehicles,~~ vehicles or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, ~~and except~~ carriers by rail, and carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;

6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation."

Section 4. G.S. 62-133(h) is repealed.

Section 5. G.S. 62-150 reads as rewritten:

"**§ 62-150. Ticket may be refused intoxicated person; penalty for prohibited entry.**

The ticket agent of any common carrier of passengers shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The ~~conductor,~~ driver or other person in charge of any conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such conveyance. If any intoxicated person, after being forbidden by the ~~conductor,~~ driver or other person having charge of any such conveyance for the use of the traveling public, shall enter such conveyance, he shall be guilty of a Class 1 misdemeanor."

Section 6. G.S. 62-151 reads as rewritten:

"**§ 62-151. Passenger refusing to pay fare or violating rules may be ejected.**

If any passenger shall refuse to pay his fare, or be or become intoxicated, or violate the rules of a common carrier, it shall be lawful for the ~~conductor or~~ driver of the ~~train or bus,~~ bus or other conveyance, and servants of the carrier, on stopping the conveyance, to put him and his baggage out of the conveyance, using no unnecessary force."

Section 7. G.S. 62-152.1(a)(2) reads as rewritten:

"(2) For purposes of this section, ~~carriers by rail are carriers of the same class,~~ carriers by motor vehicles are carriers of the same class, carriers by pipeline are carriers of the same class, carriers by water are carriers of the same class, carriers by air are carriers of the same class, and freight forwarders are carriers of the same class."

Section 8. G.S. 62-190(a) reads as rewritten:

"(a) Any pipeline company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipeline for the public for compensation, and incorporated under the laws of the State, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of the Chapter, Eminent Domain, and for the purpose of constructing and maintaining its pipelines and other works shall have all the rights and powers given ~~railroads and~~ other corporations by this Chapter and acts amendatory thereof. Nothing herein shall prohibit any such pipeline company granted the right of eminent domain under the laws of this State from extending its pipelines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipeline company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipeline companies

shall be deemed public utilities and shall be subject to regulation under the provisions of this Chapter."

Section 9. G.S. 62-200(b) reads as rewritten:

"(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of ~~fifteen dollars ($15.00) for the first day and two dollars ($2.00) for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of~~ ten dollars ($10.00) for the first day and one dollar ($1.00) for each succeeding ~~day,~~ day of such unlawful detention or neglect, but the forfeiture shall not be collected for a period exceeding 30 days."

Section 10. G.S. 62-300(a) reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

(1) Twenty-five dollars ($25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.

(2) With each application for a new certificate for motor ~~and rail~~ carrier rights, the fee shall be two hundred fifty dollars ($250.00) when filed by Class 1 motor ~~and rail~~ carriers, one hundred dollars ($100.00) when filed by Class 2 motor ~~and rail~~ carriers, and twenty-five dollars ($25.00) when filed by Class 3 motor ~~and rail~~ carriers, and twenty-five dollars ($25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars ($25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.

(3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars ($500.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers, two hundred fifty dollars ($250.00) for Class B utilities and Class 2 motor ~~and rail~~ carriers, one hundred dollars ($100.00) for Class C utilities and twenty-five dollars ($25.00) for Class D utilities and Class 3 motor ~~and rail~~ carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.

(4) One hundred dollars ($100.00) with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

~~(4a) Two hundred fifty dollars ($250.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities.~~

(5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars ($250.00) for Class A utilities, one hundred dollars ($100.00) for Class B utilities, and twenty-five dollars ($25.00) for Class C and D utilities and twenty-five dollars ($25.00) for any other person seeking a certificate of public convenience and necessity.

(5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars ($250.00).

(6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any household goods or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars ($250.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers, one hundred dollars ($100.00) for Class B utilities and Class 2 motor ~~and rail~~ carriers, and twenty-five dollars ($25.00) for Class C and D utilities and Class 3 motor ~~and rail~~ carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.

(7) Ten dollars ($10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.

(8) Repealed by Session Laws 1985, c. 454, s. 18.

(9) One dollar ($1.00) for each page (81/2 x 11 inches) of transcript of testimony, but not less than five dollars ($5.00) for any such transcript.

(10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar ($1.00) for any such order or record, plus five dollars ($5.00) for formal certification of any such paper, order or record.

(11), (12) Repealed by Session Laws 1985, c. 454, s. 18.

(13) Two hundred fifty dollars ($250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.

(14) Twenty-five dollars ($25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission."

Section 11. G.S. 160A-195 is repealed.

Section 12. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 61.

"Trains and Railroads.

"**§ 14-460. Riding on train unlawfully; venue.**

If any person, with the intention of being transported free in violation of law, rides or attempts to ride on top of any car, coach, engine, or tender, on any railroad in this State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car, or mail car on any train, he shall be guilty of a Class 3 misdemeanor.

"**§ 14-461. Unauthorized manufacture or sale of switch-lock keys a misdemeanor.**

It shall be unlawful for any person to make, manufacture, sell, or give away to any other person any duplicate key to any lock used by any railroad company in this State on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 13. G.S. 62-152, 62-192, 62-207, 62-221, 62-222, 62-227, 62-228, 62-229, 62-230, 62-231, 62-232, 62-233, 62-234, 62-238, 62-238.1, 62-239, 62-241, 62-242, 62-243, 62-244, 62-245, 62-246, and 62-247 are repealed.

Section 14. Article 11 of Chapter 62 of the General Statutes, as amended by Section 13 of this act, G.S. 62-220, 62-223, 62-224, 62-225, 62-226, 62-237, and 62-240, is recodified as Article 15 of Chapter 136 of the General Statutes, G.S. 136-190 through G.S. 136-196.

Section 15. G.S. 62-237, recodified as G.S. 136-195 by Section 14 of this act, reads as rewritten:

"**§ 136-195. To regulate crossings and to abolish grade crossings.**

The ~~Commission~~ Department may require the raising or lowering of any tracks or roadway at any grade crossing in a road or street not forming a link in or part of the State highway system and designate who shall pay for the same by partitioning the cost of said work and the maintenance of such crossing among the railroads and municipalities interested in accordance with the formula provided for grade crossing alterations or eliminations on the State highway system in G.S. 136-20(b)."

Section 16. Article 15 of Chapter 136 of the General Statutes, as enacted by this act, is amended by adding two new sections to read:

"**§ 136-197. Ticket may be refused intoxicated person; penalty for prohibited entry.**

The ticket agent of a passenger train shall at all times have the power to refuse to sell a ticket to a person wanting to purchase a ticket who may at the time be intoxicated. The conductor in charge of the train shall at all times have the power to prevent an intoxicated person from boarding the train. An intoxicated person who boards a train after being forbidden by the conductor to do so is guilty of a Class 1 misdemeanor.

"**§ 136-198. Passenger refusing to pay fare or violating rules may be ejected.**

If a passenger shall refuse to pay the fare, be or become intoxicated, or violate the rules of a passenger train, it shall be lawful for the conductor of the train to stop the train and to put the passenger and the passenger's baggage out of the train, using no unnecessary force."

Section 17. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1094 DATE 6-26-97

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

COMMITTEE SUBSTITUTE _____

Rep. )
(Sen.) KERR

moves to amend the bill on page 6, line 16

( ) WHICH CHANGES THE TITLE

by DELETING THE LINE AND BY RENUMBERING THE REMAINING SECTIONS ACCORDINGLY

SIGNED J Kerr

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

## H-1094 Repeal, Recodify Railroad Laws, 1997 Session

| GS 62- | Section Topic | Recodification Section Number | Explanation |
|---|---|---|---|
| 3 (6) | Common Carrier Definition | N/A | Deletes rail from definition of common carrier. |
| 3 (22) | Private Carrier Definition | N/A | Deletes rail from definition of private carrier. |
| 3 (23)(a)(3) &(a)(4) | Public Utility Definition | N/A | Deletes rail from definition of public utility. |
| 133 (h) | Rate Applications | N/A | Deletes provision on rates for intrastate rail carriers. Pre-empted by federal law. |
| 150 | Ticket: Intoxicated Persons | 136-197 | Deletes references to conductor and train in G.S. 62-150. Recodifies the same provision in Chapter 136 for rail. |
| 151 | No Fare: Ejected | 163-198 | Deletes references to conductor and train in G.S. 62-150. Recodifies the same provision in Chapter 136 for rail. |
| 152 | Joint Rates | N/A | Deletes provisions concerning rates, pre-empted by federal law. |
| 152.1 (a) (2) | Rail Carrier Classes | N/A | Deletes references to rail. |
| 190 | Pipeline corps | N/A | Deletes references to railroads because not subject to Utilities Commission. |
| 192 | Condemnation Mapping | | Repealed. Inconsistent with Chapter 40A. |
| 200(b) | Transport Freight in Time | | Deletes references to carload lots because rail is not subject to Utilities Commission. |
| 207 | Regulation of demurrage | N/A | Repealed. Pre-empted by Interstate Commerce Commission Termination Act (ICCIA) 49 U.S.C. 10501 |
| 220 | Powers of Railroads | 136-190 | Transferred to Chapter 136. |
| 221 | Unauthorized Business | N/A | Repealed. Covered by the corporate law statutes. |
| 222 | Through Travel Agreements | N/A | Repealed. 49 USC 10701-10705 & 49 USC 11121-11122 |
| 223 | Intersections with Highways | 136-191 | Transferred to Chapter 136. |
| 224 | Defective Crossings | 136-192 | Transferred to Chapter 136. |
| 225 | Joint RR Construction | 136-193 | Transferred to Chapter 136. |
| 226 | Cattle Guards & Private Crossings | 136-194 | Transferred to Chapter 136. |
| 227 | Change of Railroad Route | N/A | Repealed. 49 USC 10901 & 10501 |
| 228 | Temp. Track Across Railroad | N/A | Repealed. Covered by Cartway §§ 136-68, -69 |
| 229 | Shelter At Division Points | N/A | Repealed. 45 USC 151, et. Seq., 49 USC 20106, 29 USC 651, et. seq. |

| | | | |
|---|---|---|---|
| 230 | Maximum Working Hours | N/A | Repealed. 49 USC 21101, et. Seq. [Union Pacific v. Woodahl, 308 F. Supp. 1002 (P. Mont. 1970) |
| 231 | Union Depots Required | N/A | Repealed. 49 USC 10501 |
| 232 | Construction of Sidetracks | N/A | Repealed. 49 USC 10501 |
| 233 | Schedules & Connections | N/A | Repealed. 49 USC 10501 & 11101 |
| 234 | Mail; Discontinue Psngr. Trains | N/A | Repealed. 49 USC 11101 |
| 237 | Crossings & Closings | 136-195 | Transferred to Chapter 136. |
| 238 | Switching Limits | | Repealed. 49 USC 10741 |
| 238.1 | Train Speed Ordinances | | Repealed. Easterwood v. CSX, 933 F.2d 1548, 1553-54 (11th Cir. 1991); 45 USCS § 421 et. seq. (1990); 49 CFR 213.9 (1990). |
| 239 | Train Speed Ordinances | N/A | Repealed. Easterwood v. CSX, 933 F.2nd 1548, 1553-54 (11th Cir. 1991); 45 USCS § 421 et. Seq. (1990); 49 CFR 213.9 (1990). |
| 240 | Injury to Passenger | 136-196 | Transferred to Chapter 136. |
| 241 | Negligence - Killing Livestock | N/A | Repealed. Obsolete. |
| 242 | RR Liability - Injured Employees | N/A | Repealed. Federal Employer's Liability Act |
| 243 | RR Liability - Violation of Rules | N/A | Repealed. Subject to general rules for civil case. |
| 244 | Workers to Wear Badges | N/A | Repealed. |
| 245 | Duty Regarding Freight | N/A | Repealed. Pre-empted by 49 USC 10501 |
| 246 | Partial Delivery Charges | N/A | Repealed. Pre-empted by 49 USC 10501 |
| 247 | Station Abandonment | N/A | Repealed. Pre-empted by 49 USC 10501 |
| 300 (a) | Fees & Charges | N/A | Repealed. No fees collected because utilities commission jurisdiction removed |
| 319 | Riding Trains Unlawfully | 14-460 | Recodified under the criminal statutes. |
| 322 | Switchlocks | 14-461 | Recodified under the criminal statutes. |
| 160A - 195 | Regulating Speed of Trains | N/A | Repealed. Easterwood v. CSX, 933 F.2d 1548, 1553-54 (11th Cir. 1991); 45 USCS § 421 et. seq. (1990); 49 CFR 213.9 (1990) |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 431
Committee Substitute Favorable 3/25/97
Committee Substitute #2 Favorable 4/28/97
Fourth Edition Engrossed 4/30/97

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"**§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.**

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's, or recipient household member's misunderstanding or unintentional error, or any action or inaction of the county department of social

services or the Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient's or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the

amount to be garnished for each pay period. The amount garnished may be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"**§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to establishing a fraudulent or erroneous claim of public assistance. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources are authorized to administer oaths for the purpose of the examinations. Information obtained as a result of a subpoena issued pursuant to this section is confidential and may be used only by county department of social services or Department program integrity personnel for the purposes of investigating fraudulent or erroneous public assistance payments.

(b) A person subpoenaed pursuant to subsection (a) of this section may contest the subpoena. Within 10 days after service of the subpoena, a person shall notify the county department of social services or the Department of the intent to contest the subpoena. The notice shall be given by registered or certified mail and include a statement which sets forth the objections to complying with the subpoena. Upon receipt of the notice and a determination that the objections are without merit, the county department of social services or the Department may initiate proceedings to enforce the subpoena by petition to the district court in the district where a person contesting the subpoena was served.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: 'Director' means the Director of the county department of social services and 'Secretary' means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H431-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 431
THIS IS A DRAFT 25-JUN-97 15:39:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's, or recipient household member's misunderstanding or

unintentional error, or any action or inaction of the county department of social services or the Department of Human Resources which results in an erroneous public assistance program payment of which the recipient had actual or constructive knowledge that the payment was made in error.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the

garnishee, the recipient's or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. Provided, the court may not enter an order of garnishment if the court finds that the order jeopardizes the recipient's or former recipient's ability to become or remain financially self-sufficient and will result in the likelihood of an increased or recurring dependency on public assistance or an inability to secure basic necessities including but not limited to housing, food, health care and utility costs. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished may be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"**§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications

for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to establishing a fraudulent or erroneous claim of public assistance which shall be produced on a specified date more than 10 days after service of the subpoena. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources are authorized to administer oaths for the purpose of the examinations. Information obtained as a result of a subpoena issued pursuant to this section is confidential and may be used only by county department of social services or Department program integrity personnel for the purposes of investigating fraudulent or erroneous public assistance payments.

(b) A person subpoenaed pursuant to subsection (a) of this section may contest the subpoena. Within 10 days after service of the subpoena, a person shall notify the county department of social services or the Department of the intent to contest the subpoena. The notice shall be given by registered or certified mail and include a statement which sets forth the objections to complying with the subpoena. Upon receipt of the notice and a determination that the objections are without merit, the county department of social services or the Department may initiate proceedings to enforce the subpoena by petition to the district court in the district where a person contesting the subpoena was served.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: 'Director' means the Director of the county department of social services and 'Secretary' means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

(a) Any person who knowingly sells, deals in, distributes, possesses with the intent to sell, deal, or distribute food stamps coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class H felony.

(b) Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto, other than as set forth in subsection (a) of this section, shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class A1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is equal to at least one hundred dollars ($100.00) but less than five hundred dollars ($500.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to at least five hundred dollars ($500.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt temporary rules and initiate permanent rulemaking to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. Section 1 of this act becomes effective December 1, 1997 and applies to actions filed on or after that date to recover fraudulent or erroneous payments of public assistance. Section 2 of this act becomes effective December 1, 1997 and applies to acts committed on or after that date. The remainder of this act become effective when this act becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 431 CSRV 001 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

moves to amend the bill on page 2, line 39

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINE TO READ:

"PROGRAM PAYMENT. GARNISHMENT"; AND

ON PAGE 3, LINE 33,

BY DELETING THE WORD "COURT" AND SUBSTITUTING THE WORD "COUNTY"; AND

ON PAGE 5, LINE 2,

BY INSERTING BETWEEN THE WORDS "KNOWINGLY" AND "SELLS" THE WORD "BUYS,".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

VISITOR REGISTRATION SHEET

~~Education~~ Commerce June 26 '97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Patrick B. Simmons | NCDOT - Rail |
| Chad Cramer | NCATL |
| Tom J. Scott | CSC Franklin Co. |
| Shayne Ransone | DHR/DSS |
| Vicki Sutton | DHR/DSS |
| Ben Watts | DHR/DSS |
| Angie McMillan | DHR |
| Douglas Runcer | WSFC Bd of Ed / NC BAR Association |
| Frank Eason | Project Challenge |
| Sonia Schmidt | NC JCDC |
| Rob Schofield | NC JCDC |
| John Rustin | NCFDC |
| Roslyn Sawtell | NC Coalition Against Domestic Violence |
| David Anders | AFAC |
| Rick Davis | RMT Chamber of Commerce |
| Lon Walker | NCALTCF |
| Grant Wilkins | Governor's Office |
| A L Lyde | Self |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 1, 1997

The Senate Judiciary Committee met on Tuesday, July 1, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Baddour to explain **House Bill 908** - AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

Senator Albertson moved to adopt a Proposed Committee Substitute for House Bill 908 for discussion. The motion carried by voice vote.

John Hine of the Wayne County Bar Association was recognized to speak on the Proposed Committee Substitute.

Senator Horton moved to amend the Proposed Committee Substitute on Page 4, Lines 5 through 8. (Amendment attached.) The motion carried by voice vote.

Senator Horton moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Representative Howard was recognized to explain **House Bill 431** - AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AN TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

Senator Martin moved to adopt a Proposed Committee Substitute for House Bill 431 for discussion. The motion carried by voice vote.

Dr. David Bruton, Secretary of the Department of Human Resources, was recognized to speak on the Proposed Committee Substitute.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Soles, acting Chair, recognized Senator Cooper to explain **House Bill 915** - 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 UNDER SOME CIRCUMSTANCES.

Senator Rand moved to reconsider the vote on House Bill 915. The motion carried by voice vote.

Senator Rand moved to adopt a Proposed Committee Substitute for House Bill 915 for discussion. The motion carried by voice vote.

David Anders, with the Professional Firefighters of N. C., was recognized to speak on the Proposed Committee Substitute.

After discussion by the Committee, the recommendation was made to hold the bill until the next meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# July 1, 1997

| | | |
|---|---|---|
| SB 313 | Public Assistance Fraud | Dannelly |
| HB 431 | Public Assistance Fraud | Howard |
| HB 908 | Modify Rights of Decedent's Spouse | Baddour |
| HB 1023 | Pretrial Release & Bond Forfeiture | Baddour |
| HB 1064 | Housing Authority Amend. | Fox |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 908
Committee Substitute Favorable 4/24/97

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 D

HOUSE BILL 908
Committee Substitute Favorable 4/24/97
Proposed Senate Committee Substitute H908-PCS1418

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 AND TO PERMIT NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF ESTATES.

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 interest in property, outright or in trust, 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 the 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) Special Rule for Spousal Trusts. -- 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.

(c) 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.

(d) 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. Except as provided in G.S. 30-3.3(b), 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, 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. G.S. 28A-28-6 reads as rewritten:

"**§ 28A-28-6. Spouse's assumption of liabilities.**

~~If~~ Except as provided for in G.S. 28A-28-8, if the clerk grants the order for summary administration, the spouse shall be deemed to have assumed, to the extent of the value of the property received by the spouse under the will of the decedent or by intestate succession, all liabilities of the decedent that were not discharged by reason of death and liability for all taxes and valid claims against the decedent or the estate. The value of the property is the fair market value of the property on the date of death of the decedent less any liens or encumbrances on the property so received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which would have been available to the decedent if the decedent had not died except for actions

listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities of the decedent that were discharged by reason of death."

Section 10. Article 28 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-28-8. Optional notice to creditors.**

The surviving spouse may elect to give notice to creditors in accordance with G.S. 28A-14-1. Upon compliance with the provisions of G.S. 28A-14-1, claims against the decedent's estate and claims against the surviving spouse under G.S. 28A-28-6 shall be barred pursuant to G.S. 28A-19-3 unless a claim is presented to the surviving spouse as set forth in G.S. 28A-19-1, in which event the provisions of Article 19 of Chapter 28A of the General Statutes shall apply. In order to carry out the provisions of this section, the surviving spouse shall be deemed to be the personal representative of the decedent for purposes of G.S. 28A-17-12 and Article 19 of Chapter 28A of the General Statutes."

Section 11. This act becomes effective October 1, 1997. Sections 9 and 10 apply to estates of decedents dying on or after January 1, 1996. The remaining sections apply to estates of decedents dying on or after October 1, 1997.

COPY

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 908

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

H908-ARU-005

Page 1 of __

Date 7-1 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition (H908-PCS1418)

Senator Horton

moves to amend the bill on page 4, lines 5 through 8, by rewriting the lines to read:
"(b) Special Rule for Spousal Trusts. -- Where the interest in property passing to the surviving spouse is held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and where the trust authorizes a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse, then the entire value of the trust shall be treated as passing to the surviving spouse."

SIGNED Hamilton Horton Jr.
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

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.)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 908

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

H908-ARU-005

Page 1 of __

Date 7-1 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition (H908-PCS1418)

Senator

moves to amend the bill on page 4, lines 5 through 8, by rewriting the lines to read:
"(b) Special Rule for Spousal Trusts. -- Where the interest in property passing to the surviving spouse is held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and where the trust authorizes a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse, then the entire value of the trust shall be treated as passing to the surviving spouse."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

# REVISED REPORT

Wednesday, July 02, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **908** Modify Rights of Decedent's Spouse

| | |
|---|---|
| Draft Number: | PCS 4129 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 431
Committee Substitute Favorable 3/25/97
Committee Substitute #2 Favorable 4/28/97
Fourth Edition Engrossed 4/30/97

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"**§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.**

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's, or recipient household member's misunderstanding or unintentional error, or any action or inaction of the county department of social

services or the Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient's or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the

amount to be garnished for each pay period. The amount garnished may be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

**"§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to establishing a fraudulent or erroneous claim of public assistance. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources are authorized to administer oaths for the purpose of the examinations. Information obtained as a result of a subpoena issued pursuant to this section is confidential and may be used only by county department of social services or Department program integrity personnel for the purposes of investigating fraudulent or erroneous public assistance payments.

(b) A person subpoenaed pursuant to subsection (a) of this section may contest the subpoena. Within 10 days after service of the subpoena, a person shall notify the county department of social services or the Department of the intent to contest the subpoena. The notice shall be given by registered or certified mail and include a statement which sets forth the objections to complying with the subpoena. Upon receipt of the notice and a determination that the objections are without merit, the county department of social services or the Department may initiate proceedings to enforce the subpoena by petition to the district court in the district where a person contesting the subpoena was served.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: 'Director' means the Director of the county department of social services and 'Secretary' means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

# North Carolina General Assembly
# Legislative Services Office

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June 26, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Senate Judiciary Committee Co-Counsel and Carolyn Johnson, Counsel to the House Welfare Reform Committee

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 431 - PUBLIC ASSISTANCE FRAUD** - Representative Howard.

The Proposed Senate Committee Substitute for House Bill 431 provides authority to local departments of social services or the Department of Human Resources to: (1) recoup fraudulent or erroneous payment public assistance program payments through wage garnishment, and (2) issue administrative subpoenas for the purpose of investigating fraudulent or erroneous applications for or receipt of public assistance. The bill also creates a criminal offenses for the illegal trafficking, possession, or use of food stamps.

Section 1 creates two new sections in Part 1 of Article 2 of Chapter 108A. G.S. 108A-25.1 provides that up to 20% of the disposable income of a recipient or former recipient of public assistance may be subject to wage garnishment to recoup fraudulent program payments and up to 10% may be subject to garnishment for erroneous program payments which the recipient had actual or constructive knowledge were made in error. The district court in the county where the recipient or former recipient resides or is found, or in the county where the payment is made, may order garnishment upon a hearing. The court may not order garnishment if the garnishment would cause the person to become eligible for public assistance. Any order of garnishment must also comply with all applicable federal and State laws or regulations. Before being able to garnish to recover erroneous payments, DSS must exhaust all other administrative remedies to recover the money. The Social Services Commission is directed to adopt rules and regulations to implement the section.

G.S. 108A-25.2 provides for the issuance of administrative subpoenas to third parties to investigate fraudulent or erroneous applications for or receipt of public

assistance. This power shall be available to local departments of social services and the Department of Human Resources when all other reasonable means of investigation have been exhausted. On the local level, the power may be exercised by the Director of Social Services or the Director's designee. On the State level, the power may be exercised by the Secretary of Human Resources or the Secretary's designee. The information obtained based on these subpoenas shall remain confidential and only used to investigate fraudulent or erroneous public assistance payments. This section also gives the person who is subpoenaed the right to contest the subpoena thereby permitting the court determine whether the subpoena should be enforced. The failure of a third party to cooperate with a subpoena shall not affect a person's eligibility to receive public assistance. The Social Services Commission is directed to adopt rules and regulations to implement the section.

Section 2 of the bill establishes two criminal offenses for illegal possession or use of food stamps. G.S. 108A-53.1(a) makes it a Class H felony for a person to knowingly sell, deal in, distribute food stamps illegally, or to possess food stamps with the intent to illegally sell, deal, or distribute. G.S. 108A-53.1(b) provides that any person who knowingly uses, transfers acquires, alters or possesses food stamp coupons, authorization cards or access devices in any manner contrary to that authorized by the Food Stamp Program, other than as set forth in G.S. 108A-53.1(a), shall be guilty of a Class 1 misdemeanor if the value is less than $100; guilty of a Class A1 misdemeanor if the value is at least $100 but less than $500, guilt of a Class I felony if the value is at least $500, but less than $1,000; and guilty of a Class H felony if the value equals or exceeds $1,000.

Section 3 requires the Social Services Commission to adopt rules to implement this act within 90 days.

Section 4 makes Section 1 of the bill effective December 1, 1997 and applicable to actions to collect wrongful payments filed on or after that date. Section 2 of the bill becomes effective December 1, 1997 and applies to criminal offenses committed on or after that date. The remainder of the bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H431-CSRU-003
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 431
THIS IS A DRAFT 30-JUN-97 20:27:32
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT PUBLIC ASSISTANCE PROGRAM PAYMENTS AND TO CREATE OFFENSES FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"§ 108A-25.1. Garnishment of wages to recoup fraudulent public assistance program payment.

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.

(2) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(3) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(4) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent payment after 10 days following the entry of a judgment for a sum certain for fraudulent payments pursuant to a petition filed in the action in accordance with subsection (c) of this section. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent payments. Garnishment shall not be a remedy under this section when the recipient or former recipient is required to pay restitution for fraudulent public assistance payments pursuant to a criminal court order.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent public assistance program payment. Garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of the fraudulent payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient's or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to

this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. Provided, the court may not enter an order of garnishment if the court finds that the order jeopardizes the recipient's or former recipient's ability to become or remain financially self-sufficient and will result in the likelihood of an increased or recurring dependency on public assistance or an inability to secure basic necessities including but not limited to housing, food, health care and utility costs. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished may be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the county department of social services to recoup fraudulent payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

(a) Any person who knowingly buys, sells, deals in, distributes, possesses with the intent to sell, deal, or distribute food stamps coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class H felony.

(b) Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or

access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto, other than as set forth in subsection (a) of this section, shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class A1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is equal to at least one hundred dollars ($100.00) but less than five hundred dollars ($500.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to at least five hundred dollars ($500.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt temporary rules and initiate permanent rulemaking to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. Section 1 of this act becomes effective December 1, 1997 and applies to actions filed on or after that date to recover fraudulent payments of public assistance. Section 2 of this act becomes effective December 1, 1997 and applies to acts committed on or after that date. The remainder of this act become effective when this act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, August 05, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2) **431** Public Assistance Fraud/AB

| | |
|---|---|
| Draft Number: | PCS 2380 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign
(This bill was passed out of Judiciary on 7/2/97)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 915
Proposed Committee Substitute H915-PCS6290

Short Title: Firefighters/No Conflict. (Public)

Sponsors:

Referred to:

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 UNDER SOME CIRCUMSTANCES.

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~~ that person's duties or with the interest of the city. The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years."

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

VISITOR REGISTRATION SHEET

"J" Committee — 7-1-97

Name of Committee — Date

July 1, 1997

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| [illegible] | [illegible] |
| Rob Schofield | NCJCDC |
| Carol Hayhurst | Office of Gov |
| Jane B. Gray | DOJ |
| Lou Gilbert | CJPC |
| [illegible] | Attorney |
| Leigh B. Nelson | Law Clerk |
| Bill Rowe | NCJCDC |
| John Weaver | U of O |
| Sharnese Ransom | DHR/DSS |
| Ben Watts | DHR/DSS |
| Sue Schmidt | NCJCDC |
| Roslyn Savitt | ~~AIC~~ Lobbyist |
| [illegible] | CCPS |
| Linda Simmons | NC Equity |
| David Anders | PTAC |
| Stephanie Gibbs | Charlotte Observer |
| Thomas H. Clifton | Intern For Senator Dalton |
| Brian Edlin | Gov. Office |
| Brian Harris | ↓ |
| Lou Wilson | NCALTC 7 |

VISITOR REGISTRATION SHEET

Name of Committee

Date

July 1, 1997

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| George Everett | MCIC - 200 N. West St. Raleigh |
| Karen Carpenter | PCS |
| Charles Cramer | NCATL |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| [illegible] | NCBA |
| Paul Stam | Stam, Fordham + Donchi |
| [illegible] | NC [illegible] - CIU |
| [illegible] | NCPA |
| Hal Miller | NCACCT |
| Ed Bradley | NY ABC |
| Bill Alexander | NCPBA |
| R. Rocker | ENNR |
| Helen Carpentee | Clerk |
| [illegible] | NCABHC |
| [illegible] | NCADA |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 3, 1997

The Senate Judiciary Committee met on Thursday, July 3, 1997 at 8:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Nye to explain **House Bill 853** - AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN PHYSICIANS AND AUDIOLOGISTS.

Senator Odom moved to give the bill a favorable report. The motion carried.

Representative Fox was recognized to explain **House Bill 1064** - 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.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 1064 for discussion. The motion carried by voice vote.

Bill Rowe, with the N. C. Center for Justice and Commercial Development, and Joe Dougdale, with the Dept. of Crime Control & Public Safety were recognized to speak on the Proposed Committee Substitute.

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Gulley was recognized to explain **House Bill 1122** - AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY, WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.

Senator Shaw moved to adopt a Proposed Committee Substitute for House Bill 1122 for discussion. The motion carried by voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 2, Lines 5 and 40 and Page 3, Line 2. (Amendment attached.) The motion carried by voice vote.

Senator Hartsell moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

Representative Mitchell was recognized to explain **House Bill 618** - AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR MISREPRESENTATION UNDER THE WORKERS' COMPENSATION ACT.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 618 for discussion. The motion carried by voice vote.

Chris Scott, with the AFL-CIO, was recognized to speak on the Proposed Committee Substitute.

Senator Kerr moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Appropriations Committee. The motion carried by voice vote.

Senator Shaw was recognized to explain **House Bill 770** - AN ACT TO AMEND THE OFFENSE OF TRAFFICKING IN MARIJUANA BY CHANGING THE AMOUNT OF MARIJUANA THAT WOULD BE CONSIDERED TRAFFICKING, for the sponsor, Representative Kiser.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 770 for discussion. The motion carried by voice vote.

Eddie Caldwell, with the N. C. Sheriffs Association and the Law Enforcement Association, was recognized to speak on the Proposed Committee Substitute.

Senator Miller moved to reconsider the vote to adopt the Proposed Committee Substitute. The motion carried by voice vote. The Proposed Committee Substitute was withdrawn and the original bill was back before the Committee for discussion.

Senator Rand moved to amend the original bill on Page 1, Line 14 and Page 2, Line 4. The motion carried by voice vote.

Senator Odom moved to give the original bill a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# July 3, 1997

| | | |
|---|---|---|
| HB 618 - | Worker's Comp/Increase Fraud Penalty | Mitchell |
| HB 770 - | Amend Marijuana Trafficking Amts. | Kiser |
| HB 853 - | Amend Professional Corp. Act | Nye |
| HB 1064 - | Housing Authority Amendments | Fox |
| HB 1122 - | Controlled Substance Evidence | J. Gulley |

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May 27, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE: HOUSE BILL 853 - AMEND PROFESSIONAL CORPORATION ACT - PHYSICIANS AND AUDIOLOGISTS COLLABORATION** - Representative Nye.

House Bill 853 would amend the business corporation act to allow a professional corporation to be formed between a physician and an licensed audiologist.

This bill amends G.S. 55B-14 to add to the list medical professions that are permitted to combine services in one professional corporation, physicians and audiologists who are licensed. Under G.S. 55B-14(a), generally a professional corporation may only render one type of professional services. In addition to the exception to this provision for certain professional medical services in subsection (c) which this bill is amending, architects, landscape architects, engineers, and geologist are also permitted to form a combined professional corporation.

The bill becomes effective when it becomes law.

H853-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

## § 55B-14. Types of professional services.

(a) A professional corporation shall render only one specific type professional service, and such services as may be ancillary thereto, and shall not engage in any other business or profession; provided, however, such corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other type of investments.

(b) Notwithstanding subsection (a) of this section, in the case of architectural, landscape architectural, engineering or land surveying and geological services, as defined in Chapters 83A, 89A, 89C, and 89E respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

# HOUSE BILL 853

Short Title: Amend Professional Corporation Act. (Public)

Sponsors: Representative Nye.

Referred to: Rules, Calendar and Operations of the House.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO ALLOW COLLABORATIVE PRACTICES BETWEEN PHYSICIANS AND AUDIOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14(c) reads as rewritten:

"(c) A professional corporation may also be formed by and between or among:

(1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related ~~services;~~ services.

(2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the respective stockholders are licensed, certified, or otherwise approved to ~~provide;~~ provide.

(3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related ~~services;~~ services.

(4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing, or a certified clinical social worker, or both, to render psychotherapeutic and related services that the respective stockholders are licensed, certified, or otherwise approved to ~~provide;~~ provide.

(5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to ~~provide; and~~ provide.

(6) A physician practicing anesthesiology and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide.

(7) A physician and an audiologist who is licensed under Article 22 of Chapter 90 of the General Statutes to render audiological and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide."

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, August 25, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. **853** Amend Professional Corporation Act
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1064
Committee Substitute Favorable 4/29/97

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.

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June 30, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel and Susan L. Hayes, Co-Counsel, House Judiciary II Committee

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 1064 - HOUSING AUTHORITY AMENDMENTS** - Representative Fox.

The Proposed Senate Committee Substitute for 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 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 allows housing authorities to bring summary ejectment proceedings based on an allegations of criminal activity or illegal drug activity under Article 7 of Chapter 42.

Current federal law already requires a public housing agency lease to include an obligation on the tenant 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. 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.

Section 2 clarifies that it is not necessary for a defendant in a summary ejectment action to post a bond before filing an answer to the suit. This change is expected to result in a more expedient resolution of summary ejectment actions and is necessary to qualify North Carolina for the "due process exemption" from other federal requirements which requires a grievance process before commencing eviction proceedings.

This act is effective October 1, 1997 and applies to acts committed on or after that date.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1064
Committee Substitute Favorable 4/29/97
Proposed Senate Committee Substitute H1064-PCSA402

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, TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT, AND TO CLARIFY THAT A BOND IS NOT REQUIRED BEFORE FILING AN ANSWER IN A SUMMARY EJECTMENT PROCEEDING.

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. 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 a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes."

Section 2. G.S. 1-112 reads as rewritten:

"**§ 1-112. Defense without bond.**

(a) The undertaking prescribed in ~~the preceding section~~ G.S. 1-111 is not necessary if an attorney practicing in the court where the action is pending certifies to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever.

(b) An undertaking shall not be required in any summary ejectment action brought pursuant to Articles 3 or 7 of Chapter 42 of the General Statutes."

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Thursday, July 31, 1997

**SENATOR COOPER,**

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **923** Commercial Realtor Lien Act

| | |
|---|---|
| Draft Number: | PCS 4636 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **1064** Housing Authority Amendments

| | |
|---|---|
| Draft Number: | PCS A402 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1122

Short Title: Controlled Substances Evidence. (Public)

Sponsors: Representative Gulley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY, WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams

of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses

under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class D felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class I felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special

probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

~~(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.~~

(g1) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 10 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g2) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody

that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g1) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 10 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 50 pounds, but less than 100 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 100 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of

42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced

to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1122-CSRU-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1122
THIS IS A DRAFT 2-JUL-97 18:56:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Admit Drug/Optom. Evid./Court Site. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY, TO AMEND THE EVIDENCE LAWS DEALING WITH THE OPTOMETRIST/PATIENT PRIVILEGE, AND TO AUTHORIZE SUPERIOR COURT SESSIONS IN THOMASVILLE AND MOORESVILLE.

The General Assembly of North Carolina enacts:

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

" (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~~ and superior court divisions of the General Court of Justice as evidence of the

identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 10 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

Section 2. G.S. 90-95 is amended by adding a new subsection to read:

"(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 10 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement."

Section 3. G.S. 8-53.9, as enacted in Section 4 of S.L. 1997-75, reads as rewritten:

"**§ 8-53.9. Optometrist/patient privilege.**

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric ~~services,~~ services and which information was necessary to enable that person to render professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4. G.S. 7A-42 is amended by adding a new subsection to read:

"(a1) In addition to the sessions of superior court authorized by subsection (a) of this section, sessions of superior court in the following counties may be held in the additional seats of court listed by order of the Senior Resident Superior Court Judge after consultation with the Chief District Court Judge:

| County | Additional Seats of Court |
|---|---|
| Davidson | Thomasville |
| Iredell | Mooresville |

The courtrooms and related judicial facilities for these sessions of superior court may be provided by the municipality, and in such cases the facilities fee collected for the State by the clerk of superior court shall be remitted to the municipality to assist in meeting the expense of providing those facilities."

Section 5. Sections 1 and 2 of this act become effective December 1, 1997, and apply to criminal offenses committed on or after that date. Section 3 of this act is effective when this act becomes law and applies to information

acquired on or after that date. The remainder of this act is effective July 7, 1997.

**North Carolina General Assembly**
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July 3, 1997

# MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter and O. Walker Reagan, Committee Counsels

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 1122 - CONTROLLED SUBSTANCES EVIDENCE**
Representative Gulley

The Proposed Senate Committee Substitute for House Bill 1122 facilitates the admissibility of evidence of laboratory analysis of a controlled substance in criminal cases in superior and juvenile court by eliminating unnecessary witnesses related to the drug analysis and the chain of custody. This bill also clarifies when communications with optometrists are privileged, and permits superior court sessions to be held in Thomasville and Mooresville.

In order to establish the relevancy of test results, the person introducing the evidence is generally required to lay a foundation by way of expert testimony explaining the way the test is conducted, attesting its scientific reliability, and vouching for its correct administration in the particular case. Further, the substance analyzed would have to be accurately identified by proving a chain of custody to insure that the substance came from the source claimed and that its condition was unchanged.

Under current law governing controlled substance violations, chemical analyses from specified laboratories may be presented in district court as evidence of the identity, nature, and quantity of the matter analyzed. G.S. 90-95 requires that the report, on a form approved by the Attorney General, be certified by the person performing the analysis; no further authentication is required. Section 1 of this bill amend G.S. 90-95 to allow the introduction of the report of chemical analysis in superior court and juvenile court proceedings, provided that the State notifies the defendant of its intent to introduce the report into evidence at least ten days prior to trial and provides a copy of the report to the defendant, and the defendant fails to object to introduction at least five days prior to the trial.

Section 2 of the bill further provides that when material is analyzed for the purpose of determining whether it is a controlled substance, for the purpose of establishing chain of custody a statement signed by each successive person in the chain of custody may be introduced in lieu of the personal appearance

at trial of each person involved. The statement may be used only if the State notifies the defendant at least ten days prior to trial of its intent to introduce the statement, provides a copy to the defendant and the defendant fails to object to introduction at least five days prior to the trial. Any party may call witnesses to support or rebut the evidence contained in the reports or statements.

Section 3 of the bill amends the privileged communications statute for optometrists enacted in HB 527 this session. This change requires that for information given to an optometrist to be privileged and therefore not generally admissible into evidence in a trial, the information communicated had to be necessary to perform optometric services. Similar language currently exists in all other professional privilege communications statutes, including physicians, psychologist, school counselors, marriage and family counselors, and social workers. Without this amendment, any information conveyed to an optometrist while rendering professional optometric services, whether related to rendering the service or not, would be privileged.

Section 4 of the bill would permit superior court to be held outside the county seats of Davidson and Iredell Counties in Thomasville and Mooresville, when ordered by the Senior Resident Superior Court Judge after consultation with the Chief District Court Judge. Court facilities may be furnished by the municipality and any facility fees collected as part of the court costs assessed from cases tried in those municipal facilities are to be paid to the municipality by the clerk of court.

Sections 1 and 2 of the bill would become effective December 1, 1997 and would apply to offenses occurring on or after that date. Section 3 would become effective when the bill becomes law and would apply to information acquired on or after that date. Section 4 would become effective July 7, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-3-97

S. B. No. 1122 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
Sen. ) Ballance

moves to amend the bill on page 2, lines 5 & 40

( ) WHICH CHANGES THE TITLE

by deleting the number "10" and substituting "15"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, July 08, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **1122** Controlled Substances Evidence

| | |
|---|---|
| Draft Number: | PCS 6295 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H618-CSRV-005
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 618
THIS IS A DRAFT 2-JUL-97 15:24:43
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Workers Compensation Fraud. (Public)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR MISREPRESENTATION AND FOR FAILURE TO SECURE COMPENSATION UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-88.2 reads as rewritten:

"**§ 97-88.2. Penalty for ~~misrepresentation.~~ fraud.**

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 ~~misdemeanor.~~ misdemeanor if the amount at issue is less than one thousand dollars ($1,000). Violation of this section is a Class H felony if the amount at issue is one thousand dollars ($1,000) or more. The court may order restitution.

(b) The Commission shall:

(1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;
(2) Conduct administrative violation proceedings; and
(3) Assess and collect civil penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation or agreeing to forgo compensation under this Article shall be guilty of a ~~Class 1 misdemeanor.~~ Class H felony.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal offense. Any person, including, but not limited to, an attorney, an employee, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Section 2. G.S. 97-94 reads as rewritten:

"**§ 97-94. Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of ~~compensation a misdemeanor.~~ compensation.**

(a) Every employer subject to the compensation provisions of this Article shall file with the Commission, in form prescribed by it, as often as the Commission determines to be necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar ($1.00) for each employee, but not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each day of such refusal or neglect, and until the same ceases; and ~~he~~ the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully ~~refuses or neglects~~ fails to secure such compensation shall be guilty of a ~~Class 1 misdemeanor.~~ Class H felony. Any employer required to secure the payment of compensation under this Article who neglects to secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, ~~wilfully and intentionally refuses or neglects~~ willfully fails to bring the employer in compliance, shall be guilty of a ~~Class 1 misdemeanor and~~ Class H felony. Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93.

(e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of ~~the~~ any civil penalty imposed under this section on condition that the employer or person pays the compensation due and complies with G.S. 97-93."

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

**North Carolina General Assembly**
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July 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 618 - WORKERS' COMPENSATION FRAUD**
Representative Mitchell

**Subcommittee Recommendation: Favorable to committee substitute.** The bill as it passed the House increased the penalty for Workers' Compensation fraud from Class 1 misdemeanor to Class I felony. The subcommittee's proposed substitute makes Workers' Compensation fraud a Class H felony when the amount at issue is $1000 or more, but leaves it a Class 1 misdemeanor for lesser amounts. The proposed committee substitute also increases the penalty for willful failure to secure compensation.

The proposed committee substitute for House Bill 618 increases the penalty for workers' compensation fraud (by either the employer or the employee) from a Class 1 misdemeanor to a Class H felony when the amount at issue is $1000 or more. The offense occurs when a person willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment. Upon conviction, the court may order the defendant to pay restitution. Section 1 of the bill also makes it a Class H felony for any person to threaten an employee with criminal prosecution for the purpose of coercing or attempting to coerce the employee into agreeing to forgo a workers' compensation claim.

G.S. 97-93 requires every employer subject to the Workers' Compensation Act to carry insurance or prove financial ability to pay for benefits. Section 2 of the bill increases the penalty for willful failure to secure the payment of compensation from a Class 1 misdemeanor to a Class H felony. The bill also makes it a Class H felony for any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, willfully fails to bring the employer in compliance. Negligent failure to

secure the payment of compensation and negligent failure to bring the employer in compliance remain Class 1 misdemeanors.

The presumptive minimum sentence for a Class H felony, assuming prior record level I, is 5-6 months community, intermediate, or active punishment. A Class 1 misdemeanor, assuming no prior convictions, is punishable by 1-45 days community punishment.

Under current law, the Industrial Commission may assess a civil penalty against any employer required to secure the payment of compensation who refuses or neglects to do so. The Commission may also assess a civil penalty against any person who, with the ability and authority to bring an employer in compliance with requirements to secure compensation, refuses or neglects to bring the employer in compliance. The bill amends G.S. 97-94 to provide that the Industrial Commission may suspend collection or remit all or part of any civil penalty imposed in either instance, on condition that the employer or other person pay the compensation due and comply with requirements to secure compensation.

House Bill 618 would become effective October 1, 1997, and apply to offenses occurring on or after that date.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 618 (Proposed Senate Committee Substitute)

**SHORT TITLE:** Workers Compensation Fraud

**SPONSOR(S):** Representative Mitchell

**FISCAL IMPACT**

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

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **TOTAL EXPENDITURES** | No Fiscal Impact | | | | |

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

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

**BILL SUMMARY:** *TO INCREASE THE CRIMINAL PENALTIES FOR MISREPRESENTATION UNDER THE WORKERS' COMPENSATION ACT.* Amends GS 97-88.2 to make misrepresentation and threatening an employee with criminal prosecution a class I felony rather than a class 1 misdemeanor. Effective Dec. 1, 1997.

Proposed Senate Committee Substitute - July 1, 1997

Amends GS 97-88.2 to make misrepresentation and threatening an employee with criminal prosecution a class H felony rather than a class 1 misdemeanor. Also amends GS 97-94(c) to make failure of securing compensation under this act a class H felony. Effective December 1, 1997.

**ASSUMPTIONS AND METHODOLOGY**: Judicial Department and Department of Correction

Currently, the Judicial Branch does not have a specific code for offenses relating to workers' compensation fraud. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect that the proposed changes would have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals were convicted of these offenses per year approximately 2 to 4 additional inmates would be added to the prison population. If there were as many as 30 convictions no more than 6 to 10 additional inmates would be added to the prison system. These few potential additional inmates could be absorbed within existing Department of Correction resources.

Likewise, there would not be a significant fiscal impact on the Judicial Branch as there would not be any major changes in the time required to process or dispose of these cases.

**SOURCES OF DATA:** Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Charles Perusse
**APPROVED BY:** Tom L. Covington
**DATE:** July 1, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# 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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 720 DATE 7-3-97

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~ ) Rand
Sen. )

moves to amend the bill on page 1, line 14

( ) WHICH CHANGES THE TITLE

by ~~deleting "100" and substituting~~ and by rewriting that line to read: "a. Is in excess of 50 pounds, but less than ~~100~~ 50 pounds, such"

and on page 2, line 4 by rewriting the phrase: "Is 100 pounds or more" to read: "Is ~~100~~ 50 pounds or more"

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H770-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 770
THIS IS A DRAFT 2-JUL-97 15:24:10
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Amend Marijuana Trafficking Amts. (Public)

Sponsors:

Referred to:

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~~ 25 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~~ 25 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:

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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).

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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).

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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.

**North Carolina General Assembly**
**Legislative Services Office**

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July 3, 1997

## MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 770 - AMEND MARIJUANA TRAFFICKING AMOUNTS**
Representative Kiser

**Subcommittee Recommendation: Favorable to committee substitute.** House Bill 770, which was incorporated into the House version of the budget, amends the offense of trafficking in marijuana by lowering the amount of marijuana that constitutes trafficking. The proposed committee substitute lowers the amount of marijuana that would be considered trafficking from 50 pounds to 25 pounds, rather than 10 as proposed in the original bill.

The trafficking statutes are aimed at offenders who are facilitating a large scale flow of drugs, based on the idea that certain amounts of controlled substances indicate an intent to distribute on a large scale. A person is guilty of trafficking if he or she *sells, manufactures, delivers, transports, or possesses* the specified amount of a controlled substance or conspires in any of the aforementioned activities. Under current law, a person who is convicted of a trafficking offense involving 50-99 pounds of marijuana is guilty of a Class H felony - punishable by a mandatory minimum imprisonment of 25 months and a mandatory minimum fine of $5,000. The penalty for trafficking increases depending upon the amount of marijuana involved.

By contrast, the current law applicable to non-trafficking offenses makes possession of more than 1½ ounces of marijuana a Class I felony. Possession of marijuana with intent to manufacture, sell, or deliver is also a Class I felony. Assuming no prior convictions, the presumptive minimum sentence for a Class I felony is 4-6 months community punishment. The maximum sentence (prior record level VI, aggravated) for a Class I felony is 15 months intermediate or active punishment. In felony sentencing,

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(OVER)

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. The amount of the fine is generally in the discretion of the judge.

The punishment for trafficking is not affected by a defendant's prior record level or aggravating and mitigating factors. However, a sentencing judge may impose a lesser sentence if the defendant has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals involved in controlled substances offenses.

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

# CHANGE IN "TRAFFICKING" AMOUNTS

*COMMENTARY: This Bill conforms the first level of trafficking in marijuana consistent with all other first level drug trafficking statutes by removing the requirement of "in excess of", and also reduces the amount from fifty pounds to ten pounds. The amount should be reduced because marijuana's street price is approximately One Thousand Dollars ($1,000.00) a pound therefore making 10 pounds have a market value of in excess of Ten Thousand Dollars ($10,000.00). Such a value indicates someone possessing 10 lbs of marijuana is not a small-time dealer or user.*

*Moreover, one ounce of cocaine sells for approximately One Thousand Two Hundred Dollars ($1,200.00) to One Thousand Four Hundred Dollars ($1,400.00), its first level trafficking offense; while heroin sells for approximately Five Thousand Six Hundred Dollars ($5,600.00) per ounce, its first level trafficking offense. The present penalty for possession, sale, manufacture, and delivery of fifty pounds or less of marijuana is so lenient under present law that it is thought by some in the criminal community to be worth the risk. Also, today most marijuana is coming from Mexico in vehicles and the load sizes are smaller than in previous times.*

*Lastly, law enforcement agencies cannot afford undercover purchases of "in excess of fifty pounds" because of a prohibitive market price. Undercover purchases are one of the most reliable law enforcement techniques available to combat the drug problem. Without the ability to make undercover purchases and thereafter investigate the seller for some period of time before arrest, law enforcement must rely upon co-conspirator testimony to develop such cases. This is the most hazardous method of developing a criminal case for it is most open to attack on the grounds of the witnesses being unreliable.*

*Note that marijuana is to date the third most trafficked controlled substance behind cocaine and heroin. By lowering the first level amount to ten pounds, this problem is addressed more directly and with the most trustworthy of law enforcement techniques.*

**AN ACT TO PROVIDE THAT A PERSON WHO SELLS, MANUFACTURES, DELIVERS, TRANSPORTS, OR POSSESSES TEN POUNDS OR MORE OF MARIJUANA IS GUILTY OF TRAFFICKING IN MARIJUANA.**

The General Assembly of North Carolina enacts:

Section. 1. G.S. 90-95(h)(1) 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) or more of marijuana shall be guilty of a

## *COMPARISON OF MARIJUANA TRAFFICKING THRESHOLD AMOUNTS*

| | Mar[illegible] | [illegible] |
|---|---|---|
| NORTH CAROLINA | 50 LBS | 2.5 YEARS |
| GEORGIA | 5 LBS | 3 YEARS |
| VIRGINIA | 5 LBS | 5-40 YEARS |
| NEW JERSEY | 5 LBS | 5-10 YEARS |
| KENTUCKY | 5 LBS | 5-10 YEARS |
| TENNESSEE | 10 LBS | 4-10 YEARS |
| SOUTH CAROLINA | 10 LBS | 10 YEARS MAX |
| NEW YORK | 1 LB | 15 YEARS MAX |

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## LEGISLATION TO LOWER TRAFFICKING THRESHOLD FOR MARIJUANA FROM 50 POUNDS TO TEN POUNDS

## ESTIMATED ADDITIONAL PRISON INMATES ABOVE THAT CURRENTLY PROJECTED

(Effective date December 1, 1995)

| END OF FISCAL YEAR: | ESTIMATED ADDITIONAL PRISON INMATES |
|---|---|
| 95/96 | 16 |
| 96/97 | 47 |
| 97/98 | 65 |
| 98/99 | 72 |
| 99/00 | 75 |
| 00/01 | 76 |
| 01/02 | 82 |
| 02/03 | 87 |
| 03/04 | 89 |

Notes:

1. Based on information provided by narcotics law enforcement officials and by SBI lab analysts, it was estimated that no more than 5% of the total annual marijuana related convictions under G.S. 90-95(a)(1) and G.S. 90-95(a)(2) would be affected by this proposed legislation (a quantity of marijuana in excess of 10 pounds but not more than 50 pounds). These projections assume that the mandatory trafficking sentences will always be imposed (assumes no "substantial assistance").

2. The estimates assume a 3% annual growth in the volume of convictions for these crimes.

3. These impacts were developed using the Sentencing Commission's Correctional Population Simulation Model.

*Projection run 3/22/95*

---END---

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, July 08, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **618** Workers' Comp/Increase Fraud Penalty
Draft Number: PCS 4132
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: Yes

H.B. 770 Amend Marijuana Trafficking Amounts
Draft Number: PCS 1429
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Rob Schofield | NCJCDC |
| Joe Stewart | CCPS |
| Joe Dunkle | CCPS |
| Bill Rowe | NCJCDC |
| Dave Hall | SAB DMJ |
| Steve Keever | NCMS |
| Mac Swarn | NCSA |
| David Ferrell | Hafer, McNairy, Caldwell McElroy & Cutler |
| Eddie Caldwell | NC Sheriffs Assn / NC Law Enforcement Off Assn |
| John Rustia | A/C FPC |
| KEITH HUNDLEY | WEYCO |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 10, 1997

The Senate Judiciary Committee met on Thursday, July 10, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Wilkins to explain **House Bill 523** - AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

Senator Carpenter moved to adopt a Proposed Committee Substitute for House Bill 523 for discussion. The motion carried by voice vote.

Senator Reeves was recognized to review the discussion by the Judiciary Subcommittee pertaining to this legislation.

Eddie Caldwell, representing the N. C. Sheriffs Association and the Law Enforcement Association, was recognized to speak on the bill.

Senator Gulley moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Ives was recognized to explain **House Bill 176** - AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES.

Senator Shaw moved to adopt a Proposed Committee Substitute for House Bill 176 for discussion. The motion carried by voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the changes represented in the Proposed Committee Substitute.

Senator Carpenter moved to amend the Proposed Committee Substitute on Page 1, Line 12; Page 3, Line 8; Page 3, Lines 28-30 and Page 4, Lines 19-21.

After discussion by the Committee, it was recommended that the Proposed Committee Substitute be displaced.

Senator Cooper recognized Representative Baddour to explain **House Bill 1023** - AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

Senator Winner moved to adopt a Proposed Committee Substitute for House Bill 1023 for discussion. The motion carried by voice vote.

The following people were recognized to speak on the Proposed Committee Substitute:

Tom Locke - District Attorney, 11th District
Joe Dougdale - Dept. of Crime Control & Public Safety
Ralph Knott - Clerk of Court, Franklin County
John Kennedy - Clerk of Court, Wake County

Senator Rand moved to amend the Proposed Committee Substitute on Page 6, Lines 5-15. No vote was taken on the amendment.

Senator Horton moved to amend the Proposed Committee Substitute on Page 8, Line 10 by removing he word "other". The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report subject to the amendment.

Senator Cooper asked that the bill be brought back to the Committee on Tuesday.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# July 10, 1997

| | | |
|---|---|---|
| HB 176 | Equine Activities/Liability | Ives |
| HB 523 | Confiscated Gun/Law Officer Use | Wilkins |
| HB 1012 | Shooting Range Protection | Sexton |
| HB 1023 | Pretrial Release/Bond Forfeiture | Baddour |
| SB 923 | Commercial Realtor Lien Act | Odom |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 523

Short Title: Confiscated Gun/Law Officer Use. (Public)

Sponsors: Representatives Wilkins; Baddour, Carpenter, Clary, Cole, Dedmon, Gulley, Justus, Kiser, McCrary, Mercer, Owens, Rayfield, and Smith.

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~~ the weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be ~~destroyed.~~ either destroyed or kept and issued for official departmental use. Weapons that are not destroyed, but that are

kept for official departmental use may be issued to any of the following: a law enforcement officer in the sheriff's department, a wildlife officer, or an animal control officer. The sheriff shall maintain a record of the ~~destruction thereof.~~ weapons destroyed or kept and issued for departmental use in accordance with this subdivision.

(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**

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

Elaine W. Robinson, Director
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Room 5, Legislative Building
16 W. Jones Street
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Raleigh, NC 27603-5925
(919) 733-2578

July 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 523 - CONFISCATED GUN / LAW OFFICER USE** - Representative Wilkins.

The Proposed Senate Committee Substitute for House Bill 523 would restore one section of the law repealed in 1994 to permit a judge to order that a confiscated deadly weapon be turned over to a local law enforcement agency for the agency's official use.

The bill would amend G.S. 14-269.1 by granting to the court an additional option for disposing of deadly weapons confiscated in conjunction with the commission of a crime. The provision being added allows a judge, when requested by the head or chief of a local law enforcement agency, to order that the weapon be turned over to a local law enforcement agency for the official use of the agency. The bill adds language that any weapon to be turned over to law enforcement must have a legible unique identification number. The bill also requires the agency receiving the weapon to maintain a record and inventory of any confiscated weapons received.

Current law gives the judge the options of 1) returning the weapon to the lawful owner, if not the criminal defendant, 2) ordering the weapon to be destroyed, 3) turning the weapon over to the SBI's Crime Laboratory Weapons Reference Library, or 4) turning the weapon over to the North Carolina Justice Academy.

The bill is effective when it becomes law.



AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 523
Committee Substitute Favorable 4/23/97
Proposed Senate Committee Substitute H523-PCS1434

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, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, 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.

(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
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, July 10, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B.(CS) **523** Confiscated Gun/Law Officer Use

| | |
|---|---|
| Draft Number: | PCS 1434 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 176
Committee Substitute Favorable 4/23/97

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

S D

H176-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 176
THIS IS A DRAFT 23-JUN-97 14:32:34
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Equine Activities/Skating Rink Liability. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES AND TO CLARIFY THE DUTIES OF ROLLER SKATING RINK OPERATORS AND SKATERS AT ROLLER SKATING RINKS RELATING TO LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"CHAPTER 99E.

"Equine Activity Liability.

"**§ 99E-1. 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 engaged in any one or more of the following:
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.
e. Hooftrimming or placing or replacing horseshoes on an equine.
(6) 'Inherent risks of equine activities' means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:
a. The possibility of an equine behaving 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.
Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.
(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.

"**§ 99E-2. Liability.**

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, 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 engaged in an equine activity 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 engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

(1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides 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 proximately caused the injury, damage, or death.

(4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) 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 engaged in an equine activity under liability provisions as set forth in the products liability laws.

"**§ 99E-3. 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. Chapter 99E 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. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99F.

"Roller Skating Rink Safety and Liability.

"§ 99F-1. Definitions.

As used in this Chapter:

(1) 'Operator' means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.

(2) 'Roller skater' means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. 'Roller skater' includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.

(3) 'Roller skating rink' means a building, facility, or premises that provides an area specifically designed to be used by the public for recreational or competitive roller skating.

(4) 'Spectator' means an individual who is present in a roller skating rink only for the purpose of

observing recreational or competitive roller skating.

"§ 99F-2. Duties of an operator.

The operator, to the extent practicable, shall:

(1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Chapter in conspicuous places in at least three locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.

(3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.

(4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.

(5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.

(6) Maintain in good condition the railings, kickboards, and wall surrounding the skating surface.

(7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.

(8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.

(9) Provide reasonable security in parking areas during operational hours.

(10) Inspect emergency lighting units periodically to ensure the lights are in proper order.

(11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.

(12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.

(13) Prohibit the sale or use of alcoholic beverages on the premises.

(14) Comply with all applicable State and local safety codes.

(15) Not engage willfully or negligently in any conduct that may proximately cause injury, damage, or death to a roller skater or spectator.

"§ 99F-3. Duties of a roller skater.

Each roller skater shall:

(1) Maintain reasonable control of his or her speed and course at all times.

(2) Heed all posted signs and warnings.

(3) Maintain a proper outlook to avoid other roller skaters and objects.

(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.

(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person.

"§ 99F-4. Assumption of risk.

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injury, damage, or death that:

(1) Results from incidental contact with other roller skaters or spectators,

(2) Results from falls caused by loss of balance, and

(3) Involves objects or artificial structures properly within the intended path of travel of the roller skater,

and that are not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99F-2.

"§ 99F-5. Defense to suit.

Assumption of risk pursuant to G.S. 99F-4 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99F-2."

Section 3. This act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

COPY

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 176

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

H176-ARU-007



Date_____,1997

Comm. Sub. [YES]
Amends Title []
H176-CSRU-001

Senator Carpenter

moves to amend the bill on page 1, line 12, and page 4, lines 19 and 21,
by deleting the word "Article" and substituting the word "Chapter"; and

on page 3, line 8,
by deleting the word "exclusively"; and

on page 3, lines 28 through 30, by rewriting the lines to read:
"(4) Intentionally injures the participant."; and

on page 6, line 5,
by deleting the word "shall" and substituting the words "shall, to the extent commensurate with the person's age:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

JAMES A. GRAHAM
COMMISSIONER

# State of North Carolina
## Department of Agriculture
## Raleigh

# Memorandum

To: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

From: James A. Graham
Commissioner of Agriculture

Date: July 10, 1997

Subject: H.176 - Equine Activities/Skating Rink Liability

We strongly urge the passage of this legislation for the following reasons:

1) Thirty-seven (37) other states have passed similar legislation. North Carolina is competing with these other states for horse shows and horse farm development and expansion.

2) It clarifies existing law, and makes it easier for the average person to understand the rights and responsibilities of horse owners and riders.

3) North Carolina has over 33,000 horse owners, who own over 130,000 horses with a total value of more than $530 million dollars.

4) Equine activities add to the quality of life in North Carolina. Horse farms preserve open space. Urban and suburban counties such as Guilford, Union, Mecklenburg and Wake have the largest number of horses.

4) Equine activities generate income for North Carolina farmers from grain and forage production.

We support the amendments which Senator Carpenter has prepared, but we hope that insurance will not be required. This would have the effect of excluding the smaller, nonprofit horse events from the coverage of the bill.

DSM:jm

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

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.

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July 10, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 1023 - PRETRIAL RELEASE & BOND FORFEITURE**
**Proposed Senate Committee Substitute**
Representative 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 (which also applies to defendants charged with capital offenses) may be rebutted by the defendant, and the judge may authorize release of the defendant upon execution of an appearance bond in a specified amount secured as required by law.

**Section 2** of the bill provides that if a secured appearance bond is required by a magistrate as a condition of pretrial release in a case in which the only charges are misdemeanors, the defendant is entitled to have his conditions of release reviewed at the next regularly scheduled session of district court at which criminal matters may be heard. If no such session is scheduled within 96 hours of when the defendant is taken into custody, the conditions of pretrial release will be heard by any judicial official other than the one who required the secured bond.

**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. The current law is permissive. (Bill changes "may" to "shall").

**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 amends the law regarding the court's ability to remit the judgment when the principal is surrendered by the surety, or when the principal's failure to appear was the result of his or her incarceration.

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 the law to allow the court to strike a forfeiture **in its discretion** in the latter instance, or if other extraordinary cause is shown.

House Bill 1023 becomes effective December 1, 1997 and applies 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

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H1023-CSRV-006
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

THIS IS A DRAFT 9-JUL-97 12:43:01
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 bond is required by a magistrate or clerk of superior court in a case in which the only charges against the defendant are misdemeanors, the defendant, unless sooner released, shall be entitled to have the conditions of pretrial release reviewed at the next regularly scheduled session of district court at which criminal matters may be heard. If no such session is scheduled within 96 hours after the time when the defendant is taken into custody, the conditions shall be reviewed within the 96 hours by a judicial official other than the one who required the secured bond.

(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.

(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as required, the court shall issue an order for arrest for the failure to appear and shall set a secured bond at an amount of at least twice the amount of the previous bond."

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 shall 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,~~ at any time between the date of the principal's failure to appear and the 90th day after entry of 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~~ at any time between the date of the principal's failure to appear and the 90th day after the entry of judgment and the principal placed on a new bond or released by the court, or if other extraordinary cause is shown, 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 within 90 days after entry of the judgment. 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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-10-97

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~ )
) [redacted] Horton
Sen. )

moves to amend the bill on page 8, line 10

( ) WHICH CHANGES THE TITLE

by deleting the word "other"

SIGNED Horton

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

VISITOR REGISTRATION SHEET

Judiciary — July 10

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| TED DANCHI | STAM, FORDHAM & DANCHI |
| MARSHA DAVIS JONES | NC Rink operators |
| Benny Beaver | NC Horse Council |
| Nena Hodges | NC RINK OPERATORS |
| Kay B. King | N.C. Rink Operators |
| Peter Daniel | NCDA |
| Dick Mandmann | NC Horse Council |
| Joe McClure | N.C. Gun Dealers & LLC of NC |
| Doug Lassiter | NC STA |
| Nina J. Carter | NC Horse Council / NC Hunter Jump Association |
| Colin MacNair | NC Horse Council / Foxhunt / Realtor |
| [illegible] | NCGA |
| Rob Schofield | NC JCDC |
| Charles Cromer | NCATL |
| David McLeod | NCDA |
| Dick Taylor | NCAT |
| Alan Wilcox | NMO Odden |
| Bill Alexander | NC PBA |
| Bruce Worthington | Senator Reeves |
| Hal Miller | NCACCT |
| Rick O'Brien | PFFNC |

VISITOR REGISTRATION SHEET

Judiciary — July 10

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Durwood S. Lowenbaum | NS |
| Raymond Cooper | CSX |
| John Rustic | NCFPC |
| [illegible] | NCAR |
| [illegible] | NCCPR |
| Jeff Freeman | WRA |
| Kim Smith | NCLM |
| Joe Stewart | CCPS |
| Jim Lore (DA - 11th Dist) | Conf of DA's |
| Paul [illegible] | |
| Mary Carmichael | Mecklenburg County |
| [illegible] | NC Bail-Ct. |
| Joan P. Gray | DOJ |
| [illegible] | NCBA |
| Thomas H. Cecil | Intern - Senator Ballance |
| Mike Carpenter | NCHBA |
| Nancy Bradley | NCCBD |
| Deborah Ross | ACLU-NC |
| Tanya Bluestein | Institute of Government |
| Lathalyn Beattie | " " |
| Tom Bean | NC Wildlife Federation |
| Joyce Peden | DPAC |

VISITOR REGISTRATION SHEET

J. Connelly — July 10, 97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Lucinda Pulley | Attorney |
| Shannon Ransone | DSS |
| Chip Killian | Moore-Van Allen |
| Jim Upchurch | CP&L |
| John Bowdish | Zeb Alley P.A. |
| Tiffany Batten | The Charlotte Observer |
| John Nunez | Charlotte Eyewear Center |
| Robert Pasichel | Young, Moore & Henderson, P.A. |
| David Farrell | Tate, McNamara, Caldwell, McElroy, Cotta, PA. |
| P E Farrell | AOC |
| Mary Merritt | Poyner & Spruill |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 15, 1997

The Senate Judiciary Committee met on Tuesday, July 15, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Baddour for the continuation of the discussion of **House Bill 1023** - AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE begun at the previous meeting.

Senator Shaw moved to adopt a Proposed Committee Substitute (008) to House Bill 1023 for discussion. The motion carried.

Senator Reeves moved to amend the Proposed Committee Substitute on Page 7, Line 34. (Amendment attached.) The motion carried by voice vote.

The following people were recognized to speak on the Proposed Committee Substitute:

Joe Dougdale - Dept. of Crime Control & Public Safety
Jim Lawrence - represents the Board of Education, Johnston Co.
Rod Malone - N. C. Bar Association
Mark Black - represents Bail Bondsmen

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report as amended. The motion carried by voice vote.

Senator Rand was recognized to explain **House Bill 176** - AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES AND TO CLARIFY THE DUTIES OF ROLLER SKATING RINK OPERATORS AND SKATERS AT ROLLER SKATING RINKS RELATING TO LIABILITY.

Senator Rand moved to adopt a Proposed Committee Substitute (002) for House Bill 176 for discussion. The motion carried by voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 3, Line 8 and Page 6, Line 5. (Senator Rand agreed to remove lines 1 and 2 from the amendment.) The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried on a 15-6 show-of-hands vote.

Senator Odom was recognized to explain **House Bill 1012** - AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS in the absence of the bill's sponsor, Representative Sexton.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 1012 for discussion. The motion carried by voice vote.

Discussion of the Proposed Committee Substitute will be continued at the Committee meeting on Thursday.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

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 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.

Adopted 7-10-97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1023-CSRV-006
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

THIS IS A DRAFT 9-JUL-97 12:43:01
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 bond is required by a magistrate or clerk of superior court in a case in which the only charges against the defendant are misdemeanors, the defendant, unless sooner released, shall be entitled to have the conditions of pretrial release reviewed at the next regularly scheduled session of district court at which criminal matters may be heard. If no such session is scheduled within 96 hours after the time when the defendant is taken into custody, the conditions shall be reviewed within the 96 hours by a judicial official other than the one who required the secured bond.

(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.

(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as required, the court shall issue an order for arrest for the failure to appear and shall set a secured bond at an amount of at least twice the amount of the previous bond."

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 shall 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,~~ at any time between the date of the principal's failure to appear and the 90th day after entry of 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~~ at any time between the date of the principal's failure to appear and the 90th day after the entry of judgment and the principal placed on a new bond or released by the court, or if other extraordinary cause is shown, 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 within 90 days after entry of the judgment. 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.

Adopted 7-15-97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1023-CSRU-008
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

THIS IS A DRAFT 15-JUL-97 09:36:16
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 bond is required by a magistrate or clerk of superior court in a case in which the only charges against the defendant are misdemeanors, the defendant, unless sooner released, shall be entitled to have the conditions of pretrial release reviewed at the next regularly scheduled session of district court at which criminal matters may be heard. If no such session is scheduled within 96 hours after the time when the defendant is taken into custody, the conditions shall be reviewed within the 96 hours by a judicial official other than the one who required the secured bond.

(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.

(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as required, the court shall issue an order for arrest for the failure to appear and shall set a secured bond at an amount of at least twice the amount of the previous bond. Failure by the court to comply with this provision shall not affect the validity of any order or judgment."

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~~ Unless waived in writing by the obligor, service shall be made by ~~the clerk mailing by~~ certified mail, return receipt requested, on an accommodation party as defined in G.S. 25-3-419, and by first class mail on all other obligors. The clerk shall serve a copy of the order of forfeiture and notice ~~to~~ on each obligor at each obligor's address as noted on the bond and shall 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 in North Carolina, the order of forfeiture shall 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,~~ at any time between the date of the principal's failure to appear and the 90th day after entry of judgment, the forfeiture shall be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest for the failure to appear in North Carolina ~~within 90 days of the entry of the judgment~~ at any time between the date of the principal's failure to appear and the 90th day after the entry of judgment and the principal placed on a new bond or released by the court, or if extraordinary cause is shown, 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 within 90 days after entry of the judgment. 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.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1023 DATE 7-15-97

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

COMMITTEE SUBSTITUTE H1023-CSRU-008

Rep. ) Reeves
)
Sen. )

moves to amend the bill on page 7, line 34

( ) WHICH CHANGES THE TITLE

by inserting after the word "costs" the following: "Notwithstanding any other provision of this Subsection, if the principal is released on bond after being charged with a failure to appear pursuant to G.S. 15A-543 and is surrendered by the surety or arrested by law enforcement and served an order for arrest for the subsequent failure to appear within 90 days after the entry of judgment, then the remission, if any, of the forfeiture shall be in the discretion of the judge."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H176-CSRU-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 176
THIS IS A DRAFT 10-JUL-97 10:57:21
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Equine Activities/Skating Rink Liability. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES AND TO CLARIFY THE DUTIES OF ROLLER SKATING RINK OPERATORS AND SKATERS AT ROLLER SKATING RINKS RELATING TO LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"CHAPTER 99E.

"Equine Activity Liability.

"§ 99E-1. Definitions.

As used in this Chapter, 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 engaged in any one or more of the following:
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.
e. Hooftrimming or placing or replacing horseshoes on an equine.
(6) 'Inherent risks of equine activities' means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:
a. The possibility of an equine behaving 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.
Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.
(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.

"**§ 99E-2. Liability.**

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, 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 engaged in an equine activity 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 engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

(1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides 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 proximately caused the injury, damage, or death.

(4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) 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 engaged in an equine activity under liability provisions as set forth in the products liability laws.

"**§ 99E-3. 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. Chapter 99E of the North Carolina General Statutes.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Chapter shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this Chapter."

Section 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99F.

"Roller Skating Rink Safety and Liability.

"§ 99F-1. Definitions.

As used in this Chapter:

(1) 'Operator' means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.

(2) 'Roller skater' means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. 'Roller skater' includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.

(3) 'Roller skating rink' means a building, facility, or premises that provides an area specifically designed to be used by the public for recreational or competitive roller skating.

(4) 'Spectator' means an individual who is present in a roller skating rink only for the purpose of

observing recreational or competitive roller skating.

"§ 99F-2. Duties of an operator.

The operator, to the extent practicable, shall:

(1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Chapter in conspicuous places in at least three locations in the roller skating rink.

(2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.

(3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.

(4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.

(5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.

(6) Maintain in good condition the railings, kickboards, and wall surrounding the skating surface.

(7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.

(8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.

(9) Provide reasonable security in parking areas during operational hours.

(10) Inspect emergency lighting units periodically to ensure the lights are in proper order.

(11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.

(12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.

(13) Prohibit the sale or use of alcoholic beverages on the premises.

(14) Comply with all applicable State and local safety codes.

(15) Not engage willfully or negligently in any conduct that may proximately cause injury, damage, or death to a roller skater or spectator.

"§ 99F-3. Duties of a roller skater.

Each roller skater shall:

(1) Maintain reasonable control of his or her speed and course at all times.

(2) Heed all posted signs and warnings.

(3) Maintain a proper lookout to avoid other roller skaters and objects.

(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.

(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person.

"§ 99F-4. Assumption of risk.

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injury, damage, or death that:

(1) Results from incidental contact with other roller skaters or spectators,

(2) Results from falls caused by loss of balance, and

(3) Involves objects or artificial structures properly within the intended path of travel of the roller skater,

and that is not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99F-2.

"§ 99F-5. Defense to suit.

Assumption of risk pursuant to G.S. 99F-4 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99F-2."

Section 3. 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 1

HOUSE BILL 1012

Short Title: Shooting Range Protection. (Public)

Sponsors: Representatives Sexton; Baker, Berry, Brawley, Brown, Cansler, Carpenter, Clary, Decker, Eddins, Gulley, Hall, Hardy, Hiatt, Kiser, McComas, McMahan, Morris, Nichols, Owens, Rayfield, Reynolds, Sherrill, Starnes, and Thompson.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C.

"Sport Shooting Range Protection Act of 1997.

**"§ 14-409.45. Definitions.**

The following definitions apply in this Article:

(1) Person. -- An individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) Sport shooting range or range. -- An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

**"§ 14-409.46. Sport shooting range protection.**

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control

laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

(f) Each person who participates in sport shooting at a sport shooting range accepts the risks associated with the sport to the extent the risks are obvious and inherent. Those risks include injuries that may result from noise, discharge of a projectile or shot, malfunction of sport shooting equipment not owned by the shooting range, natural variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees and other forms of natural growth or debris.

"**§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1012-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1012
THIS IS A DRAFT 27-JUN-97 14:49:48
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Shooting Range Protection. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C.

"Sport Shooting Range Protection Act of 1997.

"§ 14-409.45. Definitions.

The following definitions apply in this Article:

(1) Person. -- An individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) Sport shooting range or range. -- An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

"§ 14-409.46. Sport shooting range protection.

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution

in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this act, or the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this act, or the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance, or was in existence at least three years prior to the effective date of this act, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

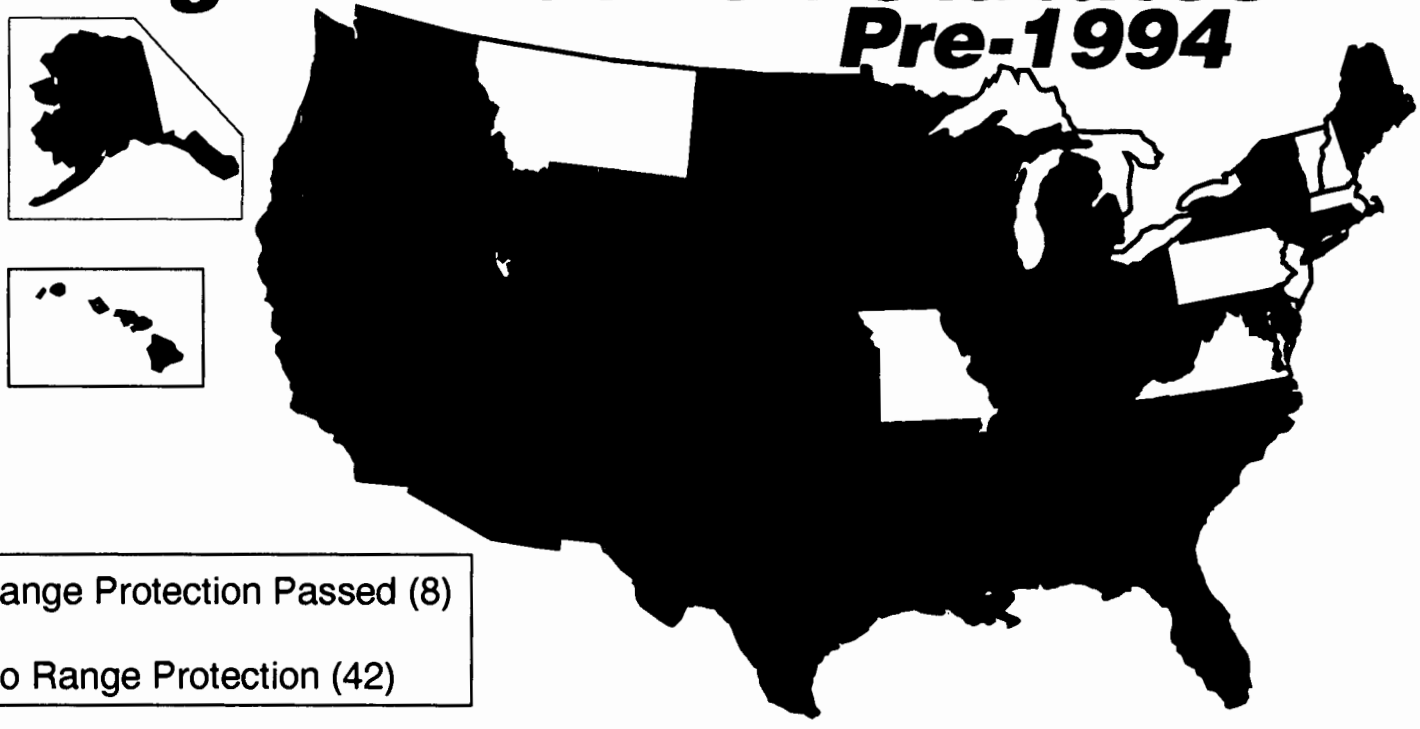
"**§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article."

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

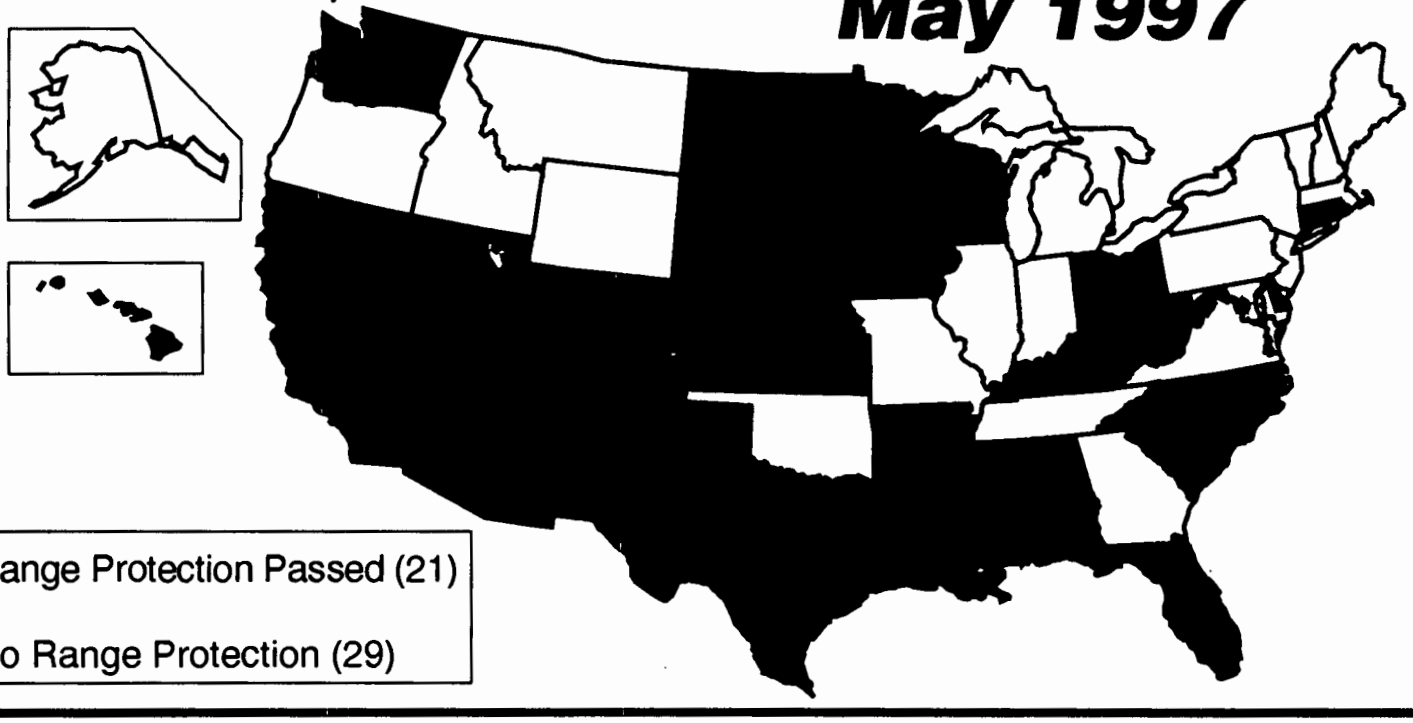
# Range Protection Statutes

## Pre-1994




Since 1994, the number of states that have enacted shooting range protection legislation has more than doubled, jumping from 8 to 21, as shown in these maps.

## May 1997



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

# REVISED REPORT

Wednesday, July 16, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **176** Equine Activities/Skating Rink Liability

| | |
|---|---|
| Draft Number: | PCS 6301 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

H.B.(CS #1) **1023** Pretrial Release and Bond Forfeiture

| | |
|---|---|
| Draft Number: | PCS 1440 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary Committee — July 15, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Carol Hartley | Gov's Office |
| John Rustin | NCFPC |
| David Francis | Kilpatrick Stockton, Coldwell, McElroy & Loftin |
| Ann Graham Littlefield | NCAR |
| Eddie Caldwell | HMC McC & C P.A. |
| Hal Miller | NC ACCT |
| Thomas K. Clifton | Intern Senator Ballance |
| Lou Rubert | CPPC |
| Maurice Weaver | NCDA |
| Gene Petty | NCDA |
| Bob Stanley | NC House Council |
| Dick Mansmann | NC Horse Council |
| Margie Rhodes | NC Horse Council |
| Amy Enser | NC Horse Council |
| Jill Miller Denning | NCATL |
| Kim Smith | NCLM |
| Lynn & Wesley Bradshaw | Guest of Sen. Cooper |
| Joe McClain | N.C. Gen. Dent. |
| Doug Lassiter | NCSTA |
| Kay K. Kirk | NC Rural operator ass. |
| Paul Satterwhite | |
| Phillip Satterwhite | |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Gene Hodges | N.C Roller Skating Owners Ass. |
| Benton Hight | NC Roller Skating Owners Assoc. |
| Mike Concannon | Grass Roots North Carolina / Forum Firearm Education |
| Joe Gruendo | NCRPA |
| Dick Taylor | NCARTA |
| Charles Greene | NCATL |
| [illegible] | NCBA |
| [illegible] | Governor Office Intern |

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 176

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

H176-ARU-008A



Date 7-15 ,1997

Comm. Sub. [YES]
Amends Title []
H176-CSRU-002

Senator Rand

moves to amend the bill on page 3, line 8,
by deleting the word "exclusively"; and

on page 6, line 5,
by rewriting the line to read:
"Each roller skater shall, to the extent commensurate with the person's age:".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**North Carolina General Assembly**
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August 11, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 584 - SPEEDING TO ELUDE ARREST**
**Proposed Committee Substitute**
Representative Jarrell

**Special Note: The provisions of this bill are included in the House version of Senate Bill 352, the Current Operations & Capital Budget Act.**

**Subcommittee Recommendation: Favorable to Committee Substitute.** The subcommittee added a provision which requires law enforcement agencies to adopt a policy applicable to the pursuit of fleeing or eluding motorists (Page 3). The proposed committee substitute also corrects a statutory citation in Section 2 of the bill. ***This second proposed committee substitute clarifies the aggravating factors that support a felony offense of speeding to elude arrest by referencing existing statutes regarding reckless driving and speeding in a school zone or work zone. This proposed committee substitute also eliminates the provision that would have made it unlawful for a person to "knowingly allow a vehicle owned by him, or under his control" to be operated while speeding to elude a law officer.***

Under current law, a person who drives a vehicle on a street or highway in excess of 55 mph and more than 15 mph over the legal limit, or who drives a vehicle in excess of 80 mph, while fleeing or attempting to elude arrest is guilty of a Class 1 misdemeanor.

**Section 1** creates a new G.S. 20-141.5 which sets up both a misdemeanor and felony offense of "Speeding to elude arrest". It makes it unlawful for any person to operate a motor vehicle while fleeing or attempting to elude a law enforcement officer. If 2 or more of 8 specified aggravating factors exist, the offense is a Class H felony, otherwise it is a Class 1 misdemeanor. Aggravating factors include speeding in excess of 15 mph over the legal limit, gross alcohol impairment, reckless or dangerous driving, negligent driving leading to an accident causing property damage in excess of $1000 or personal injury, driving while license revoked, driving through a marked school or work zone, passing a stopped school bus, or driving with a child under the age of 12 in the vehicle.

**Section 1** further provides that operation of a vehicle in violation of the statute is ***prima facie evidence*** that the vehicle was operated by the person in whose name the vehicle is registered. The bill requires that when the probable cause of the law enforcement officer is based on prima facie evidence, the officer shall make reasonable efforts to contact the registered owner of the vehicle prior to initiating criminal process. (***Prima facie evidence*** is generally defined as that which is good and sufficient on its face to establish a given fact, and which if not rebutted or contradicted, will remain sufficient. A summary of cases on the issue of the effect and constitutionality of prima facie evidence is presented at the end of this memorandum). A misdemeanor conviction will result in a one year revocation of the person's drivers license. A felony conviction will result in a three year revocation, with eligibility for a limited driving privilege after 18 months if there are no previous felony convictions under this statute and if the license has not been revoked under another provision of law.

**Section 2** of the bill repeals the existing statutes relating to speeding to elude arrest.

**Sections 3, 4 & 5** make conforming amendments to other statutes to include references to the new statute.

This bill would become effective December 1, 1997.

**More On Prima Facie Evidence:**

*A prima facie case does nothing more than carry the case to the jury for its determination.* Owens v. Kelly, 240 N.C. 770, 84 S.E.2d 163. *Likewise, prima facie evidence is not more than sufficient evidence to establish the vital facts without further proof, if it satisfies the jury. In a criminal case the jury is at full liberty to acquit the defendant if it is not satisfied from all the evidence -- including prima facie evidence -- that defendant's guilt has been proven beyond a reasonable doubt. In short, the inference or conclusion which may be drawn from certain facts recited in the statute may justify, but not compel a verdict adverse to the defendant. Ordinarily, the establishment of prima facie evidence does not shift the burden of the issue from the State to the defendant.* State v. Bryant, 245 N.C. 645, 97 S.E.2d 264; State v. Wilkerson, 164 N.C. 431, 79 S.E. 888.

Courts have held that the requirement for constitutionality is *that there be a rational connection between the fact proved and the ultimate fact presumed so that the inference of one from proof of the other is not unreasonable and arbitrary.* State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971), cert. denied, 280 N.C. 495, 186 S.E.2d 514, appeal dismissed, 280 N.C. 724, 186 S.E.2d 926 (1972); and that the statute *not shift the burden of proof from the State to the defendants, or deprive them of due process of law or the presumption of innocence, which remained with them until overcome by evidence of guilt beyond a reasonable doubt.*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H584-CSRV-005A
**PROPOSED COMMITTEE SUBSTITUTE**
HOUSE BILL 584
Committee Substitute Favorable 4/23/97
**THIS IS A DRAFT 11-AUG-97 16:54:23**
**ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION**

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 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) Reckless driving as proscribed by G.S. 20-140.
(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 in excess of the posted speed limit on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).
(7) Passing a stopped school bus as proscribed by G.S.20-217.
(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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 183
Committee Substitute Favorable 4/22/97

Short Title: DWI/Felony Prior Record Level. (Public)

Sponsors:

Referred to:

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 subdivision (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. The Judicial Department shall implement the provisions of this act from existing funds available to it.

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.

**North Carolina General Assembly**
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July 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **HOUSE BILL 183 - DWI/FELONY PRIOR RECORD LEVEL**
**Proposed Committee Substitute**
Representative Bowie

**Subcommittee Recommendation: Favorable to Committee Substitute.** Section 8 of House Bill 183, Second Edition, is deleted in the proposed committee substitute. That provision would have added a new subsection to the DWI sentencing statute to provide that where an offender appeals a DWI conviction to superior court for a new trial but then withdraws the appeal or the case is remanded to district court for imposition of judgment, the district court must, upon motion of the district attorney, hold a hearing to determine whether any grossly aggravating factors apply which were not included in the previous judgment (such as any DWI offense which occurred during the pendency of the appeal). If so, the judge would be required to modify the sentence. The district attorney's motion would have to be be filed before the order of remand or withdrawal of the appeal. A copy of the fiscal note is attached to this memorandum.

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, (except for misdemeanor death by vehicle) 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 in felony prior record calculation.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

The Judicial Department is directed to implement the provisions of the bill from available funds. The provisions regarding felony prior record level calculation become effective December 1, 1997. Other substantive provisions become effective July 1, 1998.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 183

**SHORT TITLE:** DWI/Felony Prior Record Level

**SPONSOR(S):** Bowie and McComas

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **GENERAL FUND** | | | | | |
| **Correction** | | | | | |
| Recurring | **See technical consideration—appropriation called for in bill** | | | | |
| Nonrecurring | **appears not to be needed** | | | | |
| **Judicial** | | | | | |
| Section 2 | | $401,450 | $401,450 | $401,450 | $401,450 |
| Section 1&3 | xxxxxx | IMPACT BUT NO ESTIMATE AVAILABLE | | | |
| **TOTAL EXPENDITURES** | 0 | $401,450 | $401,450 | $401,450 | $401,450 |

**NOTE: Some of the fiscal impact noted above is due to an appropriation included in Section 9 of the bill. This appropriation appears to relate to a version of the bill in prior sessions, not the current version. Not including this appropriation, the bill is anticipated to have an impact on the Judicial Branch but no estimate is available for much of this impact.**

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

**EFFECTIVE DATE:** Felony sentencing provisions effective Dec. 1, 1997. License revocation provisions effective July 1, 1998. Appropriation effective July 1, 1997.

**BILL SUMMARY: H 183. DWI/FELONY PRIOR RECORD LEVEL.** *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.* Amends GS 15A-1340.14(b) (regarding calculation of prior record points in felony sentencing) to assign one point for each prior conviction of impaired driving (GS 20-138.1) or impaired driving in commercial vehicle (GS 20-138.2). (Currently no points assigned for those offenses.)

Amends GS 20-16.5 to provide that if a person meets the criteria for driver's license revocation under current GS 20-16.5(b) (for example, refusing to submit to a chemical analysis of blood alcohol concentration, or showing a concentration of

.08 or more in such an analysis, where charging officer has reason to believe that person has committed DWI), and if the person has another pending charge for which his or her license has been or is revoked under GS 20-16.5, the person's license must be revoked until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. Period of revocation may not be less than 10 days.

Adds new GS 20-179(a1) to provide that where offender appeals DWI conviction to superior court for new trial but then withdraws the appeal or the case is remanded to district court for imposition of judgment, the district court must, upon motion of the district attorney, hold hearing to determine whether any grossly aggravating factors under GS 20-179(c)(1) apply which were not included in the previous judgment. If so, judge must modify the sentence in accordance with GS 20-179. District attorney's motion must be filed before order of remand or withdrawal of appeal. *Appropriates* from General Fund to Dep't of Correction $837,219 for 1997-98 to fund cost of additional 165 inmates incarcerated as result of bill.[1]

**ASSUMPTIONS AND METHODOLOGY:**

Department of Correction

Section I of this bill would include prior impaired driving convictions in calculating felony prior record levels under structured sentencing. Since this will affect the frequency of and length of active sentences handed down, it will increase the size of the inmate population. The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | **June 30 1998** | **June 30 1999** | **June 30 2000** | **June 30 2001** | **June 30 2002** |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[2] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[3] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this **Bill** | **0** | **321** | **365** | **422** | **462** |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill.

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

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

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 462 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,

4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

Judicial Branch The Judicial Branch anticipates a *substantial* impact from this bill. Because Section I would increase the likelihood and length of active sentence for felony convictions, it may affect the defense strategy of certain defendants. This could increase the jury trial rate and the workload of the Judicial system. Data is not available, however, to quantify this impact.

Section 2 of the bill requires that if an offender has one or more pending offenses for which the license has been revoked, civil revocation of the drivers license will be until final judgment has been entered on all offenses. Current law specifies a 10 day period. This change may increase the number of arrests for driving while license revoked. Because the revocation period may be longer there may be more contested revocations (20-30 minutes court time per case) as well as more requests for limited driving privileges(10-20 minutes per case), primarily in district court. This section also contains an additional reporting requirement for clerks to report to DMV in indefinite revocation cases.

The Judicial Branch estimates that 7,440 individuals will be charged with driving while impaired while they already have their license revoked for a pending DWI charge. They also estimate that 90% of these individuals will request a hearing to contest the revocation and/or to apply for limited driving privileges, with an average court time of 30 minutes. This totals 3,534 in additional court time. Assuming about 1800 available hours per year per courtroom, the Judicial Branch would need 2 each of District Court Judges, Assistant District Attorneys and Deputy Clerks to handle the workload. Based on allotted salaries for these positions, this would cost $401,450 starting in 1998-9.

| | | |
|---|---|---|
| District Court Judges | 2 @ 109,669 | = 219,338 |
| Assistant DA | 2@ | 131,248 |
| Deputy Clerk | 2@ | 50,864 |
| TOTAL | | $401,450 |

Section 3 of the bill requires that if a case if remanded to district court or an appeal to superior court dropped, and the district attorney has moved for a hearing to determine if any grossly aggravating factors apply to judgment, the district court shall hold such a hearing and modify the sentence in accordance with such findings. This may increase the number of district court hearings and the costs for district attorneys, district court judges and clerks of court. Data is unavailable however to quantify this impact since it is not known the number of DWI appeals that are withdrawn or remanded nor the frequency of new grossly aggravating factors.

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

**TECHNICAL CONSIDERATIONS:** Section 9 includes an appropriation of $837,219 to the Department of Correction for 1997-8 to fund the estimated additional 165 inmates that will be added by implementation of Section I. This appears to be from a version of this bill that was introduced in prior sessions. Under current analysis there is no fiscal impact of this bill on the Department of Corrections and no additional inmates will be added in 1997-8. Additional inmates in later years can be absorbed with existing resources.

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Elisa Wolper
**APPROVED BY:** Tom L. Covington
**DATE:** April 16, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H183-CSRV-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
House Bill 183
Committee Substitute Favorable 4/22/97

THIS IS A DRAFT 23-JUL-97 14:40:17
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: DWI/Felony Prior Record Level. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, AND 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.

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 subdivision (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. The Judicial Department shall implement the provisions of this act from existing funds available to it.

Section 9. Section 1 of this act becomes effective December 1, 1997. Sections 2 through 7 of this act become effective July 1, 1998.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 183 - PCS 002 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep. )
) _____
Sen. )

moves to amend the bill on page 7, lines 2+3

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINES TO READ:

" OF G.S. 20-179.3, EXCEPT THAT THE REQUIREMENTS IN G.S. 20-179.3(b)(1)c. AND G.S. 20-179.3(e) SHALL NOT APPLY. "

SIGNED Austin Allran

ADOPTED _____ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

**REVISED REPORT**

Thursday, July 31, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **183** DWI/Felony Prior Record Level

| | |
|---|---|
| Draft Number: | PCS 2377 |
| Sequential Referral: | No |
| Recommended Referral: | Appropriations |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 24, 1997

The Senate Judiciary Committee met on Thursday, July 24, 1997 at 10:00 a.m. in Room 1027 in the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Miller to give a Subcommittee report on **House Bill 183** - 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.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 183 for discussion. The motion carried by voice vote.

Representatives Bowie and McComas, sponsors of the bill, were recognized to speak on the Proposed Committee Substitute.

John Carriker, District Attorney in Pender/New Hanover Counties, was recognized to speak on the bill.

Senator Allran moved to amend the Proposed Committee Substitute on Page 7, Lines 2 and 3. (Amendment attached.) The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute and re-refer it to the Appropriations Committee. The motion carried by voice vote.

Senator Miller was recognized to give a Subcommittee report on **House Bill 584** - AN ACT TO LIMIT, TO MODIFY, AND ENHANCE ATTEMPTING TO ELUDE ARREST STATUTES.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 584 for discussion. The motion carried by voice vote.

Jane Gray, with the Attorney General's office, and Eddie Caldwell, representing the N. C. Law Enforcement Association and the N. C. Sheriffs Association, were recognized to answer questions from the Committee.

After lengthy discussion by the Committee, Senator Rand recommended that the Proposed Committee Substitute be sent back to the Subcommittee for further consideration.

Senator Odom was recognized to explain **House Bill 1012** - AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS for the sponsor, Representative Sexton. This was a continuation of the discussion from a previous meeting.

Senator Winner moved to amend the Proposed Committee Substitute on Page 2, Lines 21 and 38. (Amendment attached.) The motion carried by voice vote.

After further discussion, Senator Cooper asked that the Proposed Committee Substitute be held until the next Committee meeting.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# July 24, 1997

| | | |
|---|---|---|
| HB 183 | DWI/Felony Prior Record Level | Bowie |
| HB 344 | Motor Vehicle Occupant Restraints | Clary |
| HB 584 | Attempting to Elude Arrest | Jarrell |
| HB 1012 | Shooting Range Protection | Sexton |
| HB 1049 | Increase Cruelty to Animals Penalty | H Jll |
| HB 1087 | Motorized Vehicle Trespass | Baker |
| HB 1132 | Date Rape Drugs | R. Hunter |
| SB 923 | Commercial Realtor Lien Act | Odom |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 584
Committee Substitute Favorable 4/23/97

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 |
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| 20-138.1 | Driving a vehicle while impaired |
| 20-138.2 | Driving a commercial vehicle while impaired |
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| 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 |
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| | |
|---|---|
| | 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**
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July 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Co-Counsel

**RE:** **HOUSE BILL 584 - SPEEDING TO ELUDE ARREST**
**Proposed Committee Substitute**
Representative Jarrell

**Special Note: The provisions of this bill are included in the House version of Senate Bill 352, the Current Operations & Capital Budget Act.**

**Subcommittee Recommendation: Favorable to Committee Substitute.** The subcommittee added a provision which requires law enforcement agencies to adopt a policy applicable to the pursuit of fleeing or eluding motorists (Page 3, lines 8-14). The proposed committee substitute also corrects a statutory citation in Section 2 of the bill. A copy of the fiscal note is attached to this memorandum.

Under current law, a person who drives a vehicle on a street or highway in excess of 55 mph and more than 15 mph over the legal limit, or who drives a vehicle in excess of 80 mph, while fleeing or attempting to elude arrest is guilty of a Class 1 misdemeanor.

**Section 1** creates a new G.S. 20-141.5 which sets up both a misdemeanor and felony offense of "Speeding to elude arrest". It makes it unlawful for any person to operate a motor vehicle or to knowingly allow a vehicle owned or under his control to be operated while fleeing or attempting to elude a law enforcement officer. If 2 or more of 8 specified aggravating factors exist, the offense is a Class H felony, otherwise it is a Class 1 misdemeanor. Aggravating factors include speeding in excess of 15 mph over the legal limit, gross alcohol impairment, reckless or dangerous driving, negligent driving leading to an accident causing property damage in excess of $1000 or personal injury, driving while license revoked, driving through a marked school or work zone, passing a stopped school bus, or driving with a child under the age of 12 in the vehicle.

**Section 1** further provides that operation of a vehicle in violation of the statute is ***prima facie evidence*** that the vehicle was operated by the person in whose name the vehicle is registered. The bill requires that when the probable cause of the law enforcement officer is based on prima facie evidence, the officer shall make reasonable efforts to contact the registered owner of the vehicle prior to initiating criminal process. (***Prima facie evidence*** is generally defined as that which is good and sufficient on its face to establish a given fact, and which if not rebutted or contradicted, will remain sufficient. A summary of cases on the issue of the effect and constitutionality of prima facie evidence is presented at the end of this memorandum). A misdemeanor conviction will result in a one year revocation of the person's drivers license. A felony conviction will result in a three year revocation, with eligibility for a limited driving privilege after 18 months if there are no previous felony convictions under this statute and if the license has not been revoked under another provision of law.

**Section 2** of the bill repeals the existing statutes relating to speeding to elude arrest.

**Sections 3, 4 & 5** make conforming amendments to other statutes to include references to the new statute.

This bill would become effective December 1, 1997.

**More On Prima Facie Evidence:**

*A prima facie case does nothing more than carry the case to the jury for its determination.* Owens v. Kelly, 240 N.C. 770, 84 S.E.2d 163. *Likewise, prima facie evidence is not more than sufficient evidence to establish the vital facts without further proof, if it satisfies the jury. In a criminal case the jury is at full liberty to acquit the defendant if it is not satisfied from all the evidence -- including prima facie evidence -- that defendant's guilt has been proven beyond a reasonable doubt. In short, the inference or conclusion which may be drawn from certain facts recited in the statute may justify, but not compel a verdict adverse to the defendant. Ordinarily, the establishment of prima facie evidence does not shift the burden of the issue from the State to the defendant.* State v. Bryant, 245 N.C. 645, 97 S.E.2d 264; State v. Wilkerson, 164 N.C. 431, 79 S.E. 888.

Courts have held that the requirement for constitutionality is *that there be a rational connection between the fact proved and the ultimate fact presumed so that the inference of one from proof of the other is not unreasonable and arbitrary.* State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971), cert. denied, 280 N.C. 495, 186 S.E.2d 514, appeal dismissed, 280 N.C. 724, 186 S.E.2d 926 (1972); and that the statute *not shift the burden of proof from the State to the defendants, or deprive them of due process of law or the presumption of innocence, which remained with them until overcome by evidence of guilt beyond a reasonable doubt.*

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 584

**SHORT TITLE:** Attempting to Elude Arrest

**SPONSOR(S):** Representative Davis

### 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 | No Fiscal Impact | | | | |
| Nonrecurring | | | | | |
| **Judicial** | | | | | |
| Recurring | No Fiscal Impact | | | | |
| 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

**BILL SUMMARY:** Establishes speeding to elude arrest as a Class H felony if two or more of eight aggravating factors are present ; any other violation is punished as a Class 1 misdemeanor. Also establishes requirements fo drivers license revocation, including one year for persons convicted of a misdemeanor and three years for perso convicted of a felony, and requirements for license reinstatement.

**ASSUMPTIONS AND METHODOLOGY:** Department of Correction

The following chart shows, for the end of each fiscal year, beds projected to be available, the number of inmates projected under the present Structured Sentencing Act, the deficit or surplus beds, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (The following information is specific to each individual bill.)

| | **June 30 1998** | **June 30 1999** | **June 30 2000** | **June 30 2001** | **June 30 2002** |
|---|---|---|---|---|---|
| Projected No. of Inmates Under Current Structured Sentencing Act[1] | 31,762 | 30,371 | 30,060 | 30,610 | 31,259 |
| Projected No. of Prison Beds (DOC Expanded Capacity)[2] | 34,133 | 35,599 | 35,599 | 35,599 | 35,599 |
| No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act | +2,371 | +5,228 | +5,539 | +4,989 | +4,430 |
| No. of Projected Additional Inmates Due to this Bill | 0 | 138 | 141 | 143 | 146 |
| No. of Additional Beds Need Each Fiscal Year Due to this Bill | 0 | 0 | 0 | 0 | 0 |

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 176 inmates to the prison system by 2001-02. There is no additional fiscal impact resulting from the passage of this

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

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

bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. This analysis is based on the following assumptions and methodology:

1. There will be an estimated surplus of 4,430 beds by FY 2001-02 , based on current prison population projections by the Sentencing Commission and the estimated expanded prison bed capacity (see table above);

2. The expanded prison capacity includes all beds available when currently funded prison construction is completed, as well operating funds for food, clothing, health, and security of prisoners as the units begin housing inmates;

3. The Department of Correction will continue operating most dormitory units at 130% of capacity, as allowed by court consent decrees; and,

4. The expanded prison capacity numbers do not include out-of-state beds, jail contract beds, or the 2,000 net new beds which would be established if the projects receiving planning and design funds in the 1996 Session were fully funded.

**Note:** The number of additional inmates projected to be incarcerated if the 17 Sentencing Commission recommendations are approved by the 1997 General Assembly is 2,044 inmates by FY 2001-02 and 2,944 inmates by FY 2006-07. If all of the Sentencing Commission recommendations are approved, the estimated surplus of prison beds will be 2,296 by the end of FY 2001-02. These recommendations, along with other criminal penalty bill enhancements, reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

Assumptions and Methodology -- Judicial Department

HB 584 is similar to the 1995 HB 434; the fiscal note for that bill indicated no fiscal impact on the Judicial Department and the differences do not affect the fiscal impact. Updated data indicates that 688 defendants were convicted in 1996 under the "speeding to elude arrest" statute (750 in 1994). This bill will primarily affect these defendants although there may be a small number of additional defendants who would be charged under this bill (those who are not driving, but would knowingly allow operation of their vehicle to elude arrest), although this was included in the 1995 legislation and had no fiscal impact). A survey of District Attorneys indicated that the court system statewide could absorb any changes caused by this bill – the number of additional defendants would be small and there would be few additional trials since enhanced felony punishment is likely to increase a defendant's willingness to plead guilty to a misdemeanor

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

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Jim Mills
**APPROVED BY:** Tom L. Covington**tomC**
**DATE:** April 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H584-CSRV-003
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 584
Committee Substitute Favorable 4/23/97
THIS IS A DRAFT 23-JUL-97 14:48:27
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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:

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"§ 20-141.5. Speeding to elude arrest.

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(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.

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(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.

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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.

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies."

Section 2. G.S. 20-141(j) and G.S. 20-17(a)(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:

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| 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
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"(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**
**Legislative Services Office**

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July 8, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 1012 - SHOOTING RANGE PROTECTION -** Representative Sexton.

The Proposed Senate Committee Substitute for House Bill 1012 would protect sport shooting ranges and their owners, operators, and users from punitive restrictions.

This bill would permit sports shooting ranges to be exempted from prosecution for noise or noise pollution, would exempt these ranges from nuisance actions for noise or noise pollution in certain cases, would prohibit neighboring property owners from maintaining nuisance actions against shooting ranges, and would permit existing shooting ranges to continue even if a non-conforming use.

The new G.S. 14-409.46(a) would prohibit the civil or criminal prosecution of a shooting range owner, operator, or user for noise or noise pollution arising from the operation of the range if the range had been in existence 3 years prior to the enactment of this law or the range was in compliance with any noise control laws or ordinance at the time of the initial operation of the range.

The new G.S. 14-409.46(b) would exempt an owner, operator, or user of a shooting range from a nuisance action based on noise or noise pollution and would prohibit the State from enforcing noise laws if the range was in existence 3 years prior to the enactment of this law or the range was in compliance with existing noise control laws at the time of initial operation.

The new G.S. 14-409.46(c) exempts these ranges from noise limit rules.

The new G.S. 14-409.46(d) prohibits a person who owns or buys real estate adversely affected by a permanent range from bringing a nuisance action for any reason against a shooting range.

The new G.S. 14-409.46(e) permits shooting ranges in existence and not in violation of the law at the time this act becomes law, or that were in existence at least 3 years prior to this act becoming law, to continue to operate even if the range does not conform to any new or amended ordinance.

The new G.S. 14-409.47 would make it clear that this new Article does not otherwise prohibit a local government from regulating the location or construction of a shooting range after the effective date of this act.

This bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1012-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1012
THIS IS A DRAFT 27-JUN-97 14:49:48
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Shooting Range Protection. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C.

"Sport Shooting Range Protection Act of 1997.

"§ 14-409.45. Definitions.

The following definitions apply in this Article:

(1) Person. -- An individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) Sport shooting range or range. -- An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

"§ 14-409.46. Sport shooting range protection.

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution

in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this act, or the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this act, or the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance, or was in existence at least three years prior to the effective date of this act, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

"**§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article."

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

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1012 CSRV 001 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep. ) WINNER
)
Sen. )

1 moves to amend the bill on page 2, line 38
2 ( ) WHICH CHANGES THE TITLE
3 by REWRITING THE LINE TO READ:
4 "SECTION 2. THIS ACT IS EFFECTIVE WHEN IT
5 BECOMES LAW BUT SHALL NOT APPLY TO
6 PENDING LITIGATION."
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

VISITOR REGISTRATION SHEET

Judicial #

Name of Committee

7-24-95

Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| TED DANCHI | RALEIGH |
| Paul Satterwhite | Apex |
| THOMAS G. BEATTIE | GRNC |
| J. BEN MILES, JR. | GRASS ROOTS NORTH CAROLINA |
| Lawrence Davis | NC Passenger Safety Assn |
| Don Reinfurt | UNC Highway Safety Research Ctr. |
| JOE PARKER | NC GHSP |
| John Madler | Sentencing Commission |
| ERIC ZOGRY | " " |
| BILL SCOGGIN | NCBA |
| Anne Dixon | NCBA |
| Rob Schofield | NCVCDC |
| Deborah Ross | ACLU |
| Thomas H. Clifton | Intern - Sen Ballance |
| Stephanie Gibbs | Charlotte Observer |
| Carie Wadley | Office of Gov |
| Bill Alexander | NC PBA |
| GEOFFREY ADAMS | SMITH, ANDERSON |
| Amy Jo Bain | Smith Anderson |
| Anne Graves Whitaker | NCAR |
| Steve Keene | NCMS |
| Thomas V. Bennett | NCCFTF |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Alan Miles | Bartlett & Dixon LLP |
| Lyman Cooper | CSX Corp |
| Phil Jackson | Chicago |
| Hal Miller | NCACCT |
| Charles Cromer | NCATL |
| Christopher Scott | NC AFL-CIO |
| Roslyn Sawtt | lobbyist |
| Jane P. Gray | DOJ |
| Tom McCloud | N.C. Bar Dentons & N.C. LLEComm |
| Doug Lassiter | |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# JULY 29, 1997

The Senate Judiciary Committee met on Tuesday, July 29, 1997 at 2:00 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Odom to explain **Senate Bill 923** - AN ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

Senator Odom moved to adopt a Proposed Committee Substitute for Senate Bill 923 for discussion. The motion carried by voice vote.

Senator Forrester moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Rules Committee. The motion carried by voice vote.

Representative Gardner was recognized to explain **House Bill 301** - AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

The following people were recognized to speak on the bill or answer questions from the Committee:

Ann Winner - N. C. Bar Association
Mike Adams - Division of Social Services - Child Support
Sharnese Ransome - Division of Social Services
Walker Reagan - Committee Counsel
Gerald Robbins - Attorney General's office

Senator Odom moved to amend the bill on Page 4, Line 14; Page 5, Line 33; Page 14, Line 12; Page 15, Line 41; Page 16, Line 10; Page 19, Line 13; and Page 25, Line 37. (Amendment #002 is attached.) The motion carried by voice vote.

Senator Odom moved to amend the bill on Page 21, Lines 9-11; Page 25, Lines 17-20; Page 25, Line 27; Page 25, Lines 43-44; Page 43, Line 18 through Page 44, Line 4; and Page 44, Lines 10-12. (Amendment #001 is attached.) The motion carried by voice vote.

Senator Odom moved to amend the bill on Page 8, Lines 36-41. (Amendment # 150-A is attached.) The motion carried by voice vote.

Senator Ballance moved to amend the bill on Page 13, Lines 39-41; and Page 14, Line 5. The motion was not voted upon.

Staff was instructed to incorporate this amendment into a Committee Substitute and bring it back to the Committee for further discussion.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# July 29, 1997

| | | | |
|---|---|---|---|
| HB | 301 | Child Support/Fed. Regulations | Culpepper/ Gardner |
| SB | 923 | Commercial Realtor Lien Act | Odom |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 923

Short Title: Commercial Realtor Lien Act. (Public)

Sponsors: Senators Odom; Allran, Carpenter, and Foxx.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL ESTATE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 93A is amended by adding a new Article to read:

"ARTICLE 6.

"Commercial Real Estate Brokers' Lien Act.

**"§ 93A-90. Short title.**

This Article may be known as the 'Commercial Real Estate Brokers' Lien Act.'

**"§ 93A-91. Definitions.**

As used in this Article, the following terms mean:

(1) 'Commercial real estate', any real estate other than real estate containing one to four residential units, real estate on which no buildings or structures are located, or real estate classified as agricultural and horticultural property for tax assessment purposes. Commercial real estate does not include single-family residential units including condominiums, townhouses, or homes in a subdivision when that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real estate containing more than four residential units;

(2) 'Owner', the owner of record of commercial real estate;

(3) 'Real estate broker' and 'real estate salesperson', as such terms are defined in G.S. 93A-2.

"**§ 93A-92. Broker's lien for compensation.**

Any licensed real estate broker shall have a lien, upon commercial real estate or any interest in that commercial real estate, in the amount that the real estate broker is due:

(1) Under a written instrument signed by the owner of an interest in the commercial real estate or signed by the owner's duly authorized agent; or

(2) Under a written instrument signed by a prospective buyer or prospective tenants or signed by their duly authorized agent as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate.

"**§ 93A-93. Lien notice, content.**

A lien notice, for purposes of this Article, shall state:

(1) The name of the claimant;

(2) The name of the owner;

(3) A description of the property upon which the lien is being claimed;

(4) The amount for which the lien is claimed; and

(5) The real estate license number of the real estate broker.

The notice of lien shall be signed by the real estate broker, and the broker shall attest that the information contained in the notice is true and accurate as to his knowledge and belief.

"**§ 93A-94. When broker's lien attaches to commercial real estate.**

A real estate broker's lien authorized by this Article attaches to the commercial real estate, or an interest in the commercial real estate, when the real estate broker records a notice of the lien in the office of the register of deeds of the county in which the real property, or any interest in the real property is located, if such lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to such real estate broker's lien, except that:

(1) If payment to a real estate broker is due in installments and a portion of the payment is due after the conveyance or transfer of the commercial real estate, any claim for a lien for installment payments due after the transfer or conveyance of the real estate may be recorded any time after the transfer or conveyance of the commercial real estate but shall be recorded before the date on which the payment is due. This lien shall only be effective as a lien against the commercial real estate to the extent moneys are still owed to the transferor by the transferee. A single claim for a lien recorded before the transfer or conveyance of the commercial real estate, claiming all moneys due under an installment payment agreement, is not valid or enforceable to the extent of the payments due after the transfer or conveyance. The lien attaches for purposes of this paragraph when the claim for lien is recorded;

(2) In the case of a lease, the claim for lien shall be recorded within 90 days after the tenant takes possession of the leased property, unless written notice of the intention to sign the lease is personally served on the real estate broker entitled to claim a lien at least 10 days before the date of the intended signing of the lease, then the claim for lien shall be recorded before the date indicated for the signing of the lease. The lien attaches for purposes of this subdivision when the claim for lien is recorded; or

(3) If the real estate broker has a written agreement with a prospective buyer as provided in subdivision (2) of G.S. 93A-92, then the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer of the commercial real estate and records a notice of the lien within 90 days after the purchase or other conveyance or transfer to the buyer in the office of the register of deeds in the county in which the commercial real estate, or any interest in the commercial real estate, is located.

**"§ 93A-95. When lien claim release or satisfaction to be filed.**

If a claim for a lien has been filed with the register of deeds and a condition occurs that would preclude the broker from receiving compensation under the terms of the real estate broker's written agreement, the real estate broker shall record and provide the owner of record a written release or satisfaction of the lien.

**"§ 93A-96. Broker to mail copy of notice of lien to owner by certified mail.**

Any real estate broker who attaches a lien on commercial property pursuant to the provisions of this Article shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail. The real estate broker's lien is void if the broker does not record the lien as provided in this Article.

**"§ 93A-97. Enforcing lien.**

A real estate broker may bring suit to enforce a lien which attaches pursuant to the provisions of this Article in any court of competent jurisdiction in the county where the property is located by filing a verified petition that the lien has been recorded. Unless the claim is based upon an option to purchase the commercial real estate, the broker claiming the lien shall commence proceedings within six months after recording the lien and failure to commence proceedings within the six months shall extinguish the lien. A claim for the same lien, extinguished pursuant to this section and G.S. 93A-99, may not be asserted in any subsequent proceeding.

**"§ 93A-98. Petition, content, parties' foreclosure action, procedure.**

(a) A petition filed pursuant to the provisions of this section and G.S. 93A-97 shall contain:

(1) A statement of the terms of the contract or agreement on which the lien is based;

(2) The date when the contract or agreement was made;

(3) A description of the services performed;

(4) The amount due and unpaid;

(5) A description of the property that is subject to the lien; and

(6) Any other facts necessary for a full understanding of the rights of the parties.

The plaintiff shall file the action against all known parties who have an interest in the real estate. A foreclosure action for a lien claimed pursuant to this Article shall be brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

(b) Valid prior recorded liens or mortgages shall have priority over a real estate broker's lien.

**"§ 93A-99. Lien extinguished for broker failing to file suit or answer in pending suit within 30 days after service on owner.**

If a broker claiming a lien pursuant to this Article fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The provisions of this section shall not extend any other deadline provided by law or the filing of any pleadings or for the foreclosure of any lien governed by this Article.

**"§ 93A-100. Satisfaction or release of lien.**

If a claim for lien has been filed pursuant to the provisions of this Article with the register of deeds and the claim has been paid in full or if the lienor fails to institute a suit to enforce the lien within the time as provided by law, the real estate broker shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

**"§ 93A-101. Cost of proceeding to be paid by nonprevailing party.**

The costs of any proceeding brought to enforce a lien filed pursuant to this Article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

**"§ 93A-102. Escrow account.**

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a claim for a real estate broker's lien has been filed with the register of deeds and that lien would prevent the closing of a transaction or conveyance, an escrow account shall be established with the clerk of the superior court in the county in which the commercial real estate is located from the proceeds of the transaction or conveyance in an amount sufficient to release the claim for the lien. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to close a transaction. The proceeds held in that escrow account shall be held by the clerk until the parties' rights to the escrowed funds have been determined by:

(1) Written agreement of the parties;

(2) A final judgment of the court of competent jurisdiction; or

(3) Other process as may be agreed to by the parties.

If funds sufficient to satisfy the amount claimed in the lien have been deposited in the escrow account, the real estate broker shall release the claim for the lien on the real estate.

**"§ 93A-103. Broker to give written notice of right to lien on premises at time of closing.**

Any real estate broker who proposes to assert a lien pursuant to this Article shall be prohibited from asserting the lien unless, at the time of the closing for the transaction, the broker has given written notice to the purchaser of the commercial real estate that payment of the broker's fee is due and that he or she is entitled to a lien on the premises."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S923-CSRU-006
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 923
THIS IS A DRAFT 7-JUL-97 19:16:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Comm. Realtor Lien Study. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STUDY OF WHETHER STATUTORY LIENS SHOULD BE ALLOWED FOR FEES OWED TO COMMERCIAL REAL ESTATE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the issue of whether or not statutory liens should be allowed for fees owed to commercial real estate brokers. The Commission may look at issues addressed in Senate Bill 923, First Edition, of the 1997 Session, including proposed committee substitutes considered by the Senate Judiciary Committee during the 1997 Session. The study shall include at least the following:

(1) The extent of the problem of commercial real estate brokers not being able to collect real estate commission fees they have earned and are entitled to;

(2) Whether statutory liens should be used to address this problem; and

(3) The effects of such a statutory lien process on the commercial real estate transaction process, including issues affecting title.

Section 2. The Legislative Research Commission may make an interim report to the 1997 General Assembly, 1998 Regular Session, and shall make a final report to the 1999 General Assembly.

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

**North Carolina General Assembly**
**Legislative Services Office**

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July 29, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel (based in part on the Federal Certification prepared by Gann Watson, Staff Attorney)

**RE:** **HOUSE BILL 301 - CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT TO CONFORM TO FEDERAL WELFARE REFORM REQUIREMENTS** -Representatives Gardner and Culpepper.

House Bill 301 would amend the State's child support enforcement and paternity statutes to comply with recent changes made in federal law. This bill proposes to implement the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 94-103.

Title IV-D of the Social Security Act, as amended by P.L. 94-103, relates to Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services. H301 pertains to that portion of the Act dealing with Child Support and Establishment of Paternity. The State Plan for administering federal TANF grant funds must comply with the Act, as amended by P.L. 94-103, in order to continue to receive these federal funds.

**PART 1. STATE DIRECTORY OF NEW HIRES**

**42 USC 653A** requires that by October 1, 1997, each state shall establish an automated directory (to be known as the State Directory of New Hires) which shall contain information supplied by employers on each newly hired employee.

*Part 1 of H301 establishes the State Directory of New Hires and requires DHR to develop and maintain it. Employers are required to report information on new employees hired on or after October 1, 1997 to the State Directory within 20 business days of date of hire. There are penalties for failure to report or for conspiracy not to report. All of the provisions of Part 1 of H301 are required to be established by federal law.*

**PARTS 2 AND 2A. EXPANDED AUTHORITY OF THE DEPARTMENT TO ENFORCE CHILD SUPPORT ORDERS AND TO ESTABLISH PATERNITY.**

**42 USC 666** Requires statutorily prescribed procedures to improve effectiveness of child support enforcement. These procedures not only require statutory changes to the substantive law, e.g. procedures for paternity establishment in Chapters 110 and 49 of the General Statutes, but also statutory authorization to the child support enforcement agency, to implement these changes.

*Part 2 of H301 gives the Department of Human Resources statutory authority to implement the requirements of P.L. 104-193. DHR shall be authorized to issue subpoenas without a court order for relevant documents need for child support enforcement or paternity establishment. Subpoenas are enforceable by contempt by the court The information obtained is to be held confidential. DHR is given access to information, data storage and retrieval systems of DOT (primarily DMV) and law enforcement agencies. The following sections of P.L. 104-193 require the authorization provided under Part 2 of H301: Sections 316, 325, 331, 351, 372, and 382.*

*Part 2A implements 42 USC 666(a)(11)(c) pertaining to when due process requirements for notice are met in child support proceedings by requiring notice be given as required by Rule 5(b) of the Rules of Civil Procedure.*

**PART 3. AUTHORIZE JUDGES TO IMPOSE WORK REQUIREMENTS ON OBLIGORS WHO ARE IN ARREARS IN CHILD SUPPORT, AND REQUIRE PARENTS TO PROVIDE MEDICAL SUPPORT.**

**42 USC 666(a)(15)** requires procedures "to ensure that persons owing past-due support work or have a plan for payment of such support."

*Part 3 implements this requirement by requiring judges to impose work activities under appropriate circumstances. "Work activities" are those defined under Section 407(d) of P.L. 104-193.*

**42 USC 666(a)(19)** requires procedures under which all child support orders are required to include a provision for health care coverage of the child, when this coverage is available to the noncustodial parent at a reasonable cost. This section also requires that if the noncustodial parent changes employers and health care coverage is provided through the new employer, then the order for health care coverage is applicable to the new employer.

*Sections 3, 3.1, and 3.2 of H301 implement the health care coverage requirement, and also provide that upon notice from the obligee (non custodial parent or State agency), the new employer must enroll the child in the employer's health plan.*

**PART 3A. CONFORM STATE TAX INTERCEPT LAW TO FEDERAL REQUIREMENTS.**

**42 USC 657** was amended by Section 303 of P.L. 104-193. It changes the way support collected through the State and Federal income tax intercept procedures is distributed.

*Section 3.3 of H301 conforms the State income tax intercept law to conform with the new federal distribution requirements.*

**PART 4. REQUIREMENT TO PROVIDE SOCIAL SECURITY NUMBERS ON CERTAIN DOCUMENTS**

**42 USC 666(a)(13)** requires that an individual's social security number be recorded on the following documents: application for a commercial driver's license, business or occupational license, and marriage license; divorce decree,; child support order, paternity order or acknowledgment; and death certificates.

*Part 4 of H301 amends the pertinent General Statutes to ensure that social security numbers are provided. This part clarifies that social security numbers must be received as part of the drivers license application before the license can be issued.*

**PART 4A. PATERNITY ESTABLISHMENT PROCEEDINGS**

**42 USC 666(a)(5)** requires paternity establishment proceedings allowing for: genetic testing, presumption of paternity based on genetic test results, legal finding of paternity subject to recission, no jury trial, and temporary support order during contested paternity when there is a substantial probability that the contestant is the biological father.

*Part 4A of H301 establishes paternity establishment procedures that are in accordance with and do not exceed federal requirements, including eliminating the right to a jury trial in paternity actions, allowing temporary support orders pending a paternity determination upon genetic test results with a 97% or higher probability, and the right to subpoena information without a court order.*

**PART 5. SUSPENSION/REVOCATION OF LICENSES FOR FAILURE TO COMPLY WITH SUBPOENA.**

**42 USC 666(a)(16)** requires that driver's, occupational, business, and recreational licenses be subject to suspension/revocation when an obligor or putative parent fails to comply with a subpoena issued pursuant to child support or paternity establishment proceedings.

*Part 5 of H301 amends the relevant section of the General Statutes to provide for revocation/suspension of licenses for failure to comply with subpoena.*

**PARTS 6 and 6A. INCOME WITHHOLDING**

**42 USC 666(a)(1)** requires that income withholding procedures be implemented immediately when arrearages occur.

*Part 6 of H301 decreases the time that employer's have to withhold income from the obligor. Change would decrease the time from 10 days to 7 days. (Conforms to federal requirement under 42 USC 666(a)(1)). Part 6 also allows for collection and disbursement of support to be made by the State collection and disbursement unit when that unit becomes operational.*

*Part 6A provides that in IV-D cases where the obligor is not currently subject to withholding and is in arrears in support, the obligor becomes subject to withholding immediately.*

**PART 7. ESTABLISHMENT OF LIEN ON REAL AND PERSONAL PROPERTY OF PERSONS OWING PAST-DUE CHILD SUPPORT.**

**42 USC 666(a)(4)** requires procedures under which liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent.

*Part 7 of H301 establishes a procedure for obtaining a lien when an obligor is in arrears 3 months or $3,000, whichever occurs first. The procedure provides for verification of information, filing, executing, and discharging the lien, and imposes a penalty for failure to discharge.*

**PART 8. DHR TO DEVELOP AUTOMATED DATA PROCESSING AND INFORMATION SYSTEM, AND CENTRALIZED COLLECTION AND DISBURSEMENT SYSTEM FOR THE ENHANCEMENT OF CHILD SUPPORT COLLECTION AND DISBURSEMENT.**

**42 USC 654(16)**, as amended by Sec. 344 of P.L. 94-103, requires the state agency administering the state program to have in operation a single statewide automated data processing and information retrieval system which has the capability to perform [specified] tasks. The system must be in effect by October 1, 2000. Sec. 312 of P.L. 94-103 requires that the state establish and operate a unit for the collection and disbursement of payments under support orders. The unit must be operational by October 1, 1999.

*Section 8 of H301 direct DHR to take the necessary steps to comply with the federal requirements for an automated system, and for a collection and disbursement unit. DHR is required to report to the General Assembly on its progress.*

*Section 8.1 amends the General Statutes effective October 1, 1999 to establish the collection and disbursement unit as the single agency for collecting and disbursing child support payments.*

*Section 8.2 of H301 implements federal requirements (42 USC 654, as amended by Sec. 303 of P.L. 94-103) for protecting the privacy rights of parties when there is the danger that disclosure of information regarding the whereabouts of a person may result in physical or emotional harm to the person.*

**PART 9. FINANCIAL INSTITUTION DATA MATCH**

**42 USC 666(a)(17)** requires procedures under which the State agency shall enter into agreements with financial institutions to develop and operate a data match system. Under the system, financial institutions must provide certain information about a noncustodial parent who maintains an account at the institution and who owes past-due support. The financial institution may charge a fee for providing the match but the fee may not exceed the actual cost of conducting the data match.

*Part 9 of H301 authorizes DHR and financial institutions to enter into agreements to establish the data match system.*

**PART 10. AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).**

**42 USC 666(f)** requires that the State must have in effect by January 1, 1998, the UIFSA and amendments thereto.

*North Carolina adopted UIFSA in 1995. Part 10 of H301 adopts the amendments adopted by the National Conference of Commissioners on Uniform State Laws.*

**PART 10A. FRAUDULENT CONVEYANCES TO AVOID CHILD SUPPORT**

**42 USC 666(g)** requires that states have in effect either the Uniform Fraudulent Conveyances Act of 1981, the Uniform Fraudulent Transfers Act of 1984, or 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.

*House Bill 407 - Uniform Fraudulent Transfer Act has been enacted into law so this provision is no longer needed in this bill.*

The bill becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 301
Committee Substitute Favorable 4/28/97
Committee Substitute #2 Favorable 5/15/97

Short Title: Child Support/Fed. Req. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

The General Assembly of North Carolina enacts:

**PART 1. STATE DIRECTORY OF NEW HIRES.**

Section 1. Effective October 1, 1997, Article 1 of Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.**

(a) Directory Established. -- There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. -- Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or

electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. -- Each report required by this section shall contain the name, address, and social security number of the employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. -- Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars ($25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars ($500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. -- Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. -- Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. -- The Employment Security Commission may access information entered into the Directory from employer reports for the purpose of administering employment security programs. The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.

(h) Department May Contract for Services. -- The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. -- Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. -- As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Business day' means a day on which State offices are open for business.

(2) 'Department' means the Department of Human Resources.

(3) 'Employee' means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term 'employee' does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(4) 'Employer' has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term 'labor organization' shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer."

**PART 2. EXPANDED AUTHORITY OF THE DEPARTMENT TO ENFORCE CHILD SUPPORT ORDERS AND TO ESTABLISH PATERNITY.**

Section 2. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.1. Additional powers and duties of the Department.**

(a) In addition to other powers and duties conferred upon the Department of Human Resources, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

(1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon

the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.

(2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have direct access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency of this State for law enforcement purposes.

(3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.

(4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.

(5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.

(6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.

(7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).

(8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:

a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;

b. Implement income withholding in accordance with this Chapter;

c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;

d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.

(b) As used in this section, the term 'Secretary' means the Secretary of Human Resources, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5)."

Section 2.1. (a) G.S. 50-13.4(d) reads as rewritten:

"(d) ~~Payments~~ In non-IV-D cases, 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~~ the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the court or other proper State agency for the benefit of the child."

(b) This section applies to orders entered or modified on and after October 1, 1997.

Section 2.2. G.S. 50-13.4 is amended by adding the following new subsection to read:

"(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer."

**PART 2A. NOTICE/DUE PROCESS REQUIREMENTS.**

Section 2.3. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-131.1. Notice; due process requirements met.**

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice

requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint."

**PART 3. AUTHORIZE JUDGES TO IMPOSE WORK REQUIREMENTS ON OBLIGORS WHO ARE IN ARREARS IN CHILD SUPPORT, AND TO REQUIRE PARENTS TO PROVIDE MEDICAL SUPPORT.**

Section 3. G.S. 110-136.3 is amended by adding the following new subsection to read:

"(a1) Payment Plan/Work Requirement for Past-Due Support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under Section 407(d) of P.L. 104-193, as the court deems appropriate."

Section 3.1. G.S. 50-13.11 reads as rewritten:

**"§ 50-13.11. Orders and agreements regarding medical support and health insurance coverage for minor children.**

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. ~~An order or agreement for medical support may require one or both parties to maintain health insurance, dental insurance, or both, or to pay the medical, hospital, or dental expenses.~~ An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental, or other health care related expenses.

(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance.

(b) The party ordered or under agreement to provide ~~medical~~ health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide ~~medical,~~ health, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide ~~medical,~~ health, hospital, and dental insurance.

(d) When a court order or agreement for ~~medical~~ health insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide ~~medical~~ health insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any

~~medical,~~ health, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.

(f) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan."

Section 3.2. G.S. 108A-69(b) reads as rewritten:

"(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer doing business in this State, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or

2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

**PART 3A. CONFORM STATE TAX INTERCEPT LAW TO FEDERAL REQUIREMENTS.**

Section 3.3. G.S. 105A-2(1)d. reads as rewritten:

"d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9

and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support ~~arrearages~~ owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;".

**PART 4. REQUIREMENT TO PROVIDE SOCIAL SECURITY NUMBERS ON CERTAIN DOCUMENTS.**

Section 4. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. The applicant's social security number shall not be printed on the license and may be released only to the Department of Human Resources, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii)."

Section 4.1. G.S. 49-7 reads as rewritten:

"**§ 49-7. Issues and orders.**

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support an illegitimate child."

Section 4.2. G.S. 49-14(a) reads as rewritten:

"(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~~ The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

Section 4.3. G.S. 50-8 reads as rewritten:

**"§ 50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.**

In all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint, and that the facts set forth therein as grounds for divorce, except in actions for divorce from bed and board, have existed to his or her knowledge for at least six months prior to the filing of the complaint: Provided, however, that if the cause for divorce is one-year separation, then it shall not be necessary to allege in the complaint that the grounds for divorce have existed for at least six months prior to the filing of the complaint; it being the purpose of this proviso to permit a divorce after such separation of one year without awaiting an additional six months for filing the complaint: Provided, further, that if the complainant is a nonresident of the State action shall be brought in the county of the defendant's residence, and summons served upon the defendant personally or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this section, any suit or action for divorce heretofore instituted by a nonresident of this State in which the defendant was personally served with summons or in which the defendant personally accepted service of the summons and the case was tried and final judgment entered in a court of this State in a county other than the county of the defendant's residence, is hereby validated and declared to be legal and proper, the same as if the suit or action for divorce had been brought in the county of the defendant's residence.

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no ~~such~~ minor children of the marriage, the complaint shall so state. In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff and, if known, the social security number of the defendant.

In all prior suits and actions for divorce heretofore instituted and tried in the courts of this State where the averments of fact required to be contained in the affidavit heretofore required by this section are or have been alleged and set forth in the complaint in said suits or actions and said complaints have been duly verified as required by Rule 11 of the Rules of Civil Procedure, said allegations so contained in said complaints shall be deemed to be, and are hereby made, a substantial compliance as to the allegations heretofore required by this section to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce.

In all suits and actions for divorce heretofore instituted and tried in this State on and subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the verification to the complaint in said suits or actions are not in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to verification of complaint or the allegations, statements or averments in the verification contain the language that the facts set forth in the complaint are true 'to the best of affiant's knowledge and belief'

instead of the language 'that the same is true to his (or her) own knowledge' or similar variation in language, said allegations, statements and averments in said verifications as contained in or attached to said complaint shall be deemed to be, and are hereby made, a substantial compliance as to the allegations, averments or statements required by this section to be set forth in any such verifications; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce. The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties."

Section 4.4. G.S. 50-13.4 is amended by adding the following new subsections to read:

"(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Human Resources, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

Section 4.5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 4.6. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"**§ 93B-14. Information on applicants for licensure.**

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only to the State Child Support Enforcement

Program of the Department of Human Resources upon its request and for the purpose of enforcing a child support order."

**PART 4A. PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 4.7. G.S. 110-132(a) reads as rewritten:

**"§ 110-132. Acknowledgment of paternity and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of paternity, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

~~and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a~~

In order to rescind, a challenger must request the district court to order the recission and to include in the order specific findings of fact that the request for recission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of recission to the State Registrar of Vital Statistics. Upon receipt of an order of recission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support ~~said~~ the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. ~~Such~~ The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment

shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether ~~he~~ the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. ~~Such~~ The mother shall not be excused from making ~~such~~ the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 4.8. G.S. 110-133 reads as rewritten:

"**§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number."

Section 4.9. G.S. 49-12.1(c) reads as rewritten:

"(c) The parties may ~~waive a jury trial and~~ enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child."

Section 4.10. G.S. 49-14 is amended by adding the following new subsections to read:

"(f) Parties to an action to establish paternity are not entitled to a trial by jury on the issue of paternity.

(g) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of

paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(h) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child."

Section 4.11. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.**

(a) In a IV-D case, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation."

Section 4.12. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the ~~child.~~ child, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. ~~The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence.~~ The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

**PART 5. SUSPENSION/REVOCATION OF LICENSES FOR FAILURE TO COMPLY WITH SUBPOENA ISSUED PURSUANT TO CHILD SUPPORT OR PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 5. The catch line to G.S. 110-142 reads as rewritten:

"**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child ~~support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**"

Section 5.1. G.S. 110-142.1 reads as rewritten:

"**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support ~~or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child ~~support.~~ support or with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) ~~The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in,~~

~~a court of this State, and who are not in compliance with that order.~~ The designated representative shall submit a certified list with the names, social security numbers, and last known address of ~~these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office.~~ individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the ~~obligors~~ individuals listed are subject to an order for the payment of support and ~~that these persons~~ are not in compliance with the ~~order.~~ order, or are not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of ~~its obligors,~~ the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of ~~obligors~~ individuals from the Department of Human Resources, each board shall determine whether its applicant or licensee is an ~~obligor~~ individual on the list. If the applicant or licensee is ~~an obligor~~ on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the ~~obligor's~~ individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the ~~obligor's~~ individual's license 20 days from the date of the notice to the ~~obligor~~ individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the ~~obligor.~~ individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the

license. The notice shall inform the ~~obligor~~ individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the ~~obligor.~~ individual. The Department of Human Resources shall also develop a form that the ~~obligor~~ individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an ~~obligor~~ individual to have the underlying arrearage and any relevant defenses investigated, to provide an ~~obligor~~ individual information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an ~~obligor~~ individual assistance in the establishment of a payment schedule on arrears.

(h) If the ~~obligor~~ individual wishes to challenge the submission of the ~~obligor's~~ individual's name on the certified ~~list~~ list, or if the individual wishes to negotiate a payment schedule, the ~~obligor~~ individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the ~~obligor's~~ request for review notify the appropriate board of the ~~obligor's~~ request for review and direct the board to stay any action revoking or suspending the ~~obligor's~~ individual's ~~license~~ license until further notice from the designated representative. The designated representative shall review the ~~obligor's~~ case and inform the ~~obligor~~ individual in writing of the representative's findings and decision upon completion of the review. ~~The~~ If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this ~~section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement.~~ section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the ~~obligor~~ individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the ~~obligor's~~ individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the ~~obligor's~~ individual's license.

(i) The designated representative shall notify the ~~obligor~~ individual in writing that the ~~obligor~~ individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the ~~obligor~~ individual shall file the motion and inform the ~~obligor~~ individual that the ~~obligor's~~ individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this~~ the individual is in compliance with this section. The notice shall also inform the ~~obligor~~ individual that

the ~~obligor~~ individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the ~~obligor~~ individual upon the designated representative who submitted the ~~obligor's~~ individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the ~~obligor~~ individual is no longer in arrears or that the ~~obligor's~~ individual's license should be reinstated to allow the ~~obligor~~ individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this section. ~~In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.~~ If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the ~~obligor~~ individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement ~~as provided in subsection (h) of this section,~~ the designated representative shall mail to the ~~obligor~~ individual and the appropriate board a notice certifying that the ~~obligor~~ individual is in compliance. The receipt of certification shall serve to notify the ~~obligor~~ individual and the board that, for the purposes of this section, the ~~obligor~~ individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond

only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable."

Section 5.2. G.S. 110-142.2 reads as rewritten:

**"§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an ~~obligor~~ individual is at least 90 days in arrears in making child support payments, or is not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

(1) Revoking the ~~obligor's~~ individual's regular or commercial license to operate a motor vehicle;

(2) Revoking the ~~obligor's~~ individual's hunting, fishing, or trapping licenses;

(3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the ~~obligor's~~ individual's motor vehicle.

(b) Upon finding that the ~~obligor~~ individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the ~~obligor~~ individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the ~~obligor's~~ individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the ~~obligor's~~ individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An ~~obligor~~ individual whose license has been revoked for

reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An ~~obligor~~ individual may file a request with the child support enforcement agency for certification that the ~~obligor~~ individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the ~~obligor~~ individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the ~~obligor~~ individual for a request for certification. If the child support enforcement agency finds that the ~~obligor~~ individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual.

(e) If licensing privileges are revoked under this section, the ~~obligor~~ individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over ~~time.~~ time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer ~~delinquent~~ delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the ~~obligor's~~ individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the ~~obligor's~~ individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the ~~obligor~~ individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The

Division shall not remove any restriction of the ~~obligor's~~ individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process."

Section 5.3. G.S. 50-13.12 reads as rewritten:

"**§ 50-13.12. Forfeiture of Licensing Privileges for Failure to Pay Child ~~Support.~~ Support or for Failure to Comply with Subpoena Issued Pursuant to Child Support or Paternity Establishment Proceedings.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of state government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.

(4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.

(5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, or upon a finding that a person has willfully failed to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, and upon findings as to any specific licensing privileges held by the ~~obligor,~~ obligor or held by the person subject to the subpoena, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in ~~full.~~ full, or, as applicable, until the person subject to the subpoena has complied with the subpoena. The court may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. The court may stay the revocation pertaining to the person subject to the subpoena upon a finding that the person has complied with or is no longer subject to the subpoena. Upon an order revoking such privileges of an obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof

of certification by the clerk that the obligor is no longer delinquent in child support payments. Upon an order revoking such privileges of a person subject to the subpoena that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the person has failed to comply with the subpoena issued pursuant to a child support or paternity establishment proceeding and that the person's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the person is in compliance with or no longer subject to the subpoena.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with a subpoena may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the subpoena. The clerk shall provide a form to be used ~~by the obligor~~ for a request for certification. If the clerk finds that the obligor has met the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with a subpoena has complied with or is no longer subject to the subpoena, then the clerk shall certify that the person has met the requirements of or is no longer subject to the subpoena and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. If the licensing privileges of a person other than the obligor are revoked under this section for failure to comply with a subpoena, the person may petition the district court for reinstatement of the privileges. The court may order the privileges reinstated if the person has complied with or is no longer subject to the subpoena that was the basis for revocation. Upon reinstatement under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with a subpoena, the clerk of superior court shall certify that the person has complied with or is no longer subject to the subpoena. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) ~~The obligor~~ An obligor or other person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor or other person applies for reinstatement of licensing privileges. Upon request of the ~~obligor,~~ obligor or other person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that ~~the obligor's~~ an obligor's or other person's licensing privileges are ~~revoked,~~ revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to an obligor shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with a subpoena shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

Section 5.4. G.S. 93B-13 reads as rewritten:

"**§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child ~~support.~~ support or for failure to comply with subpoena.**

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Human Resources that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under

its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

**PART 6. INCOME WITHHOLDING.**

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~~ 7 business days of the date the obligor is paid, send to the clerk of superior court or State collection and disbursement unit, as 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~~ agency, the clerk of superior ~~court;~~ court, or the State collection and disbursement unit;

(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 or the State collection and disbursement unit 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."

**PART 6A. EXPEDITED PROCEDURES FOR INCOME WITHHOLDING.**

Section 6.1. G.S. 110-136.3(b) reads as rewritten:

"(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the ~~earliest of:~~

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

~~b.~~ ~~The~~ date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

b. The date on which the obligor requests withholding; or

c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if arrearages occur."

Section 6.2. 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 or on the obligor's request for withholding or on the obligee's request

for ~~withholding;~~ withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue support, 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;

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."

**PART 7. ESTABLISHMENT OF A LIEN ON REAL AND PERSONAL PROPERTY OF PERSON OWING PAST-DUE CHILD SUPPORT.**

Section 7. Chapter 44 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15.

"Liens for Overdue Child Support.

**"§ 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.**

(a) Definitions. As used in this Article, the terms 'designated representative', 'obligee', and 'obligor' have the meanings given them in G.S. 110-129.

(b) Lien Created. There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a court-ordered child support obligation equals three months of payments or three thousand dollars ($3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. A verified statement of child support delinquency shall contain the following information:

(1) The caption and file docket number of the case in which child support was ordered;

(2) The date of the order of support;

(3) The amount of the child support obligation established by the order; and

(4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

(1) IV-D Cases. In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.

(2) Non-IV-D Cases. In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien on the judgment docket only by order of the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and

with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes.

"**§ 44-87. Discharge of lien; penalty for failure to discharge.**

(a) Liens created by this Article may be discharged as follows:

(1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;

(2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or

(3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee."

Section 7.1. G.S. 50-13.4(f)(8) reads as rewritten:

"(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a ~~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."

**PART 8. DEPARTMENT OF HUMAN RESOURCES TO DEVELOP AUTOMATED DATA PROCESSING AND INFORMATION SYSTEM, AND CENTRALIZED COLLECTION AND DISBURSEMENT SYSTEM FOR THE ENHANCEMENT OF CHILD SUPPORT COLLECTION AND DISBURSEMENT.**

Section 8. (a) Automated System. The Department of Human Resources shall develop a single statewide automated data processing and information retrieval system to enhance enforcement of child support obligations. The system shall have the capability to perform the following tasks:

(1) Program management, including the controlling and accounting for use of federal, State, and local funds in carrying out the State child support enforcement program, and maintaining the data necessary to meet federal reporting requirements on a timely basis;

(2) Maintenance of requisite data on State performance with respect to paternity establishment and child support enforcement, including systems controls to ensure completeness and reliability of and ready access to this data;

(3) Establishment of safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the system. Safeguards shall include policies restricting, controlling, and monitoring access to the system and database;

(4) Maintenance of the State's automated case tracking system (ACTS) in accordance with federal requirements;

(5) Information retrieval, comparisons, and disclosure, including the sharing and comparison of information from other databases and information comparison services. Comparison services shall include information retrieval and sharing with such databases as the Federal Case Registry of Child Support Orders, the Federal Parent Locator Service, temporary family assistance and Medicaid agencies, and other agencies of this State and agencies of other states and interstate information networks;

(6) Collection and distribution of support payments through the State Collection Disbursement Unit as required by federal law; and

(7) Implement expedited administrative procedures for the establishment of paternity and the enforcement of child support orders.

In addition, the system shall include procedures to ensure that all personnel who have access to confidential program data are trained in and informed of applicable requirements and penalties. The Department shall impose administrative penalties authorized by State law for unauthorized access to or disclosure or use of confidential data in the system.

(b) Progress Reports on Development. The Department shall provide periodic written progress reports to the Cochairs of the House and Senate Appropriations subcommittees on Human Resources, and to the Fiscal Research Division, not later than October 1, 1997, March 1, 1998, and October 1, 1998. Information contained in the report shall include, but not be limited to:

(1) Federal requirements for the automated system and collection and disbursements units;

(2) Status of development of the automated system and collection and disbursement unit as of the date of the progress report, and whether the development plan is on schedule, behind schedule, or ahead of schedule, and the reasons therefor;

(3) Projected costs to develop and operate the automated system; and projected savings, if any, from full implementation of the system;
(4) Projected costs to develop and operate the collection and disbursement unit, including recommendations on whether the Department should operate the unit or whether it should be operated by an outside contractor;
(5) The amount of State funds that must be appropriated for the 1998-99 fiscal year to develop and implement the collection and disbursement unit; and
(6) Other information requested by the Cochairs or that the Department considers relevant and useful.

Section 8.1. Effective October 1, 1999, G.S. 110-139 is amended by adding the following new subsection to read:

"(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for:

(1) All IV-D cases, and
(2) All non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding.

The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit."

Section 8.2. G.S. 110-139.1(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the ~~The~~ parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any ~~absent~~ parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect ~~to~~ to:

(1) ~~the~~ The unlawful taking or restraint of a ~~child~~ child;
(2) ~~or making~~ Making or enforcing a child custody ~~determination.~~ determination, including visitation orders;
(3) Establishing paternity; or
(4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent."

**PART 9. FINANCIAL INSTITUTIONS/DATA MATCH SYSTEM.**

Section 9. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-139.2. Data match system; agreements with financial institutions.**

(a) The Department of Human Resources and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State."

Section 9.1. G.S. 110-139(d) reads as rewritten:

"(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility ~~company~~ company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility ~~company~~ company, cable television company, or financial institution. A utility ~~company~~ company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure."

**PART 10. AMEND UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).**

Section 10. G.S. 52C-1-101 reads as rewritten:

"**§ 52C-1-101. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Child' means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) 'Child support order' means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) 'Duty of support' means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) 'Home state' means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) 'Income' includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.

(6) 'Income-withholding order' means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.

(7) 'Initiating state' means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support ~~Act is filed for forwarding to a responding state.~~ Act.

(8) 'Initiating tribunal' means the authorized tribunal in an initiating state.

(9) 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) 'Issuing tribunal' means the tribunal that issues a support order or renders a judgment determining parentage.

(11) 'Law' includes decisional and statutory law and rules and regulations having the force of law.

(12) 'Obligee' means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or

which has independent claims based on financial assistance provided to an individual obligee; or

c. An individual seeking a judgment determining parentage of the individual's child.

(13) 'Obligor' means an individual, or the estate of a decedent:

a. Who owes or is alleged to owe a duty of support;

b. Who is alleged but has not been adjudicated to be a parent of a child; or

c. Who is liable under a support order.

(14) 'Register' means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) 'Registering tribunal' means a tribunal in which a support order is registered.

(16) 'Responding state' means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) 'Responding tribunal' means the authorized tribunal in a responding state.

(18) 'Spousal-support order' means a support order for a spouse or former spouse of the obligor.

(19) 'State' means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term ~~'state'~~ includes:

a. An Indian tribe; and ~~includes~~

b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this ~~Chapter.~~ Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) 'Support enforcement agency' means a public official or agency authorized to seek:

a. Enforcement of support orders or duties of ~~support~~ support;

b. ~~to seek establishment~~ Establishment or modification of child ~~support,~~ support;

c. ~~to seek determination~~ Determination of ~~paternity,~~ parentage; or

d. ~~to~~ To locate obligors or their assets.

(21) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a

child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) 'Tribunal' means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division."

Section 10.1. G.S. 52C-2-203 reads as rewritten:

"**§ 52C-2-203. Initiating and responding tribunal of ~~this State.~~ state.**

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Section 10.2. G.S. 52C-2-205 reads as rewritten:

"**§ 52C-2-205. Continuing, exclusive jurisdiction.**

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until ~~each individual party has~~ all of the parties who are individuals have filed written ~~consent~~ consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 10.3. (a) The title of Part 3 of Article 2 of Chapter 52C of the General Statutes reads as rewritten:

"Part 3. Reconciliation ~~With Orders of Other States.~~ of Multiple Orders."

(b) G.S. 52C-2-207 reads as rewritten:

"**§ 52C-2-207. Recognition of controlling child support ~~orders.~~ order.**

~~(a) If a proceeding is brought under this Chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~

~~(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

~~(2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal must be recognized.~~

~~(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~

~~(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State may issue a child support order, which must be recognized.~~

~~(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.~~

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under G.S. 52C-2-205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 10.4. G.S. 52C-3-304 reads as rewritten:

"**§ 52C-3-304. Duties of initiating tribunal.**

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this State may issue a certificate or other

document and make findings required by the law of the responding state. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 10.5. G.S. 52C-3-305 reads as rewritten:

"**§ 52C-3-305. Duties and powers of responding tribunal.**

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrears, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and State computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorneys' fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any."

Section 10.6. G.S. 52C-3-306 reads as rewritten:

"**§ 52C-3-306. Inappropriate tribunal.**

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

Section 10.7. G.S. 52C-3-307 reads as rewritten:

"**§ 52C-3-307. Duties of support enforcement agency.**

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 10.8. Article 5 of Chapter 52C of the General Statutes reads as rewritten:

"ARTICLE 5.

"~~Direct~~ Enforcement of Order of Another State Without Registration.

"**§ 52C-5-501. ~~Recognition~~ Employer's receipt of income-withholding order of another state.**

~~(a)~~ An income-withholding order issued in another state may be sent ~~by first-class mail~~ to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order.

~~(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

~~(1) The person or agency designated to receive payments in the income-withholding order; or~~

~~(2) If no person or agency is designated, the obligee.~~

"§ 52C-5-502. ~~Administrative enforcement of orders.~~

~~(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.~~

~~(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.~~

**Employer's compliance with income-withholding order of another state.**

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

"**§ 52C-5-503. Compliance with multiple income-withholding orders.**

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

"**§ 52C-5-504. Immunity from civil liability.**

An employer who complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

"**§ 52C-5-505. Penalties for noncompliance.**

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

"**§ 52C-5-506. Contest by obligor.**

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this State in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order; and

(3) The person or agency designated to receive payments in the income-withholding order if no person or agency is designated, to the obligee.

"**§ 52C-5-507. Administrative enforcement of orders.**

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter."

Section 10.9. G.S. 52C-6-601 reads as rewritten:

**"§ 52C-6-601. Registration ~~or [of]~~ of order for enforcement.**

A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement."

Section 10.10. G.S. 52C-6-605 reads as rewritten:

**"§ 52C-6-605. Notice of registration of order.**

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the~~ notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable."

Section 10.11. G.S. 52C-6-606 reads as rewritten:

**"§ 52C-6-606. Procedure to contest validity or enforcement of registered order.**

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after ~~the date of mailing or personal service of~~ notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing."

Section 10.12. G.S. 52C-6-611 reads as rewritten:

**"§ 52C-6-611. Modification of child support order of another state.**

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only ~~if,~~ if G.S. 52C-6-613 does not apply and after notice and ~~hearing,~~ hearing it finds that:

(1) The following requirements are met:

a. The child, the individual obligee, and the obligor do not reside in the issuing state;

b. A petitioner who is a nonresident of this State seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) ~~An individual party or the child~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the ~~individual~~ parties who are individuals have filed a written consent in the issuing tribunal ~~providing that~~ for a tribunal of this State ~~may~~ to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

~~(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered.~~"

Section 10.13. Article 6 of Chapter 52C of the General Statutes is amended by adding the following new sections to read:

"**§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this State.**

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

**"§ 52C-6-614. Notice to issuing tribunal of modification.**

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction."

Section 10.14. The Reviser of Statutes shall cause to be printed separate from this Part all relevant portions of the official comments to the Uniform Interstate Family Support Act, as amended, as the Reviser deems appropriate.

**PART 10A. FRAUDULENT CONVEYANCES TO AVOID CHILD SUPPORT.**

Section 10.15. Article 3 of Chapter 39 of the General Statutes is amended by adding the following new section to read:

**"§ 39-15.1. Fraudulent conveyances to avoid child support.**

(a) As used in this section, the terms 'obligor' and 'obligee' shall have the meanings given those terms in G.S. 110-129.

(b) In all child support cases, the conveyance of property by an obligor who is delinquent in the payment of child support may be voided by an obligee upon a showing of fraudulent intent. The factors which may be considered to show fraudulent intent are as follows:

(1) The conveyance or obligation was to an insider.

(2) The obligor retained possession or control of the property after the conveyance.

(3) The conveyance was concealed or not disclosed.

(4) Before the conveyance was made or the obligation was incurred, the obligor had been sued or threatened with suit.

(5) The conveyance was of substantially all the obligor's assets.

(6) The obligor removed or concealed assets.

(7) The value of the consideration received by the obligor was not reasonably equivalent to the value of the asset conveyed or the amount of the obligation incurred.

(8) The obligor was insolvent or became insolvent shortly after the conveyance was made or the obligation incurred.

(9) The conveyance occurred shortly before or shortly after a substantial debt was incurred.

(10) The obligor conveyed the essential assets of a business to a lienor who conveyed the assets to an insider of the obligor.

Proof of two or more of the factors listed in this subsection creates a rebuttable presumption of fraud. Unless otherwise provided under this Article, if the court finds by clear and convincing evidence that the conveyance was fraudulent, then the conveyance is void."

**PART 11. MISCELLANEOUS AND EFFECTIVE DATE**

Section 11. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 11.1. If the 1997 General Assembly enacts House Bill 407, the Uniform Fraudulent Transfer Act, then Section 10.15 of this act is repealed effective on the date that the Uniform Fraudulent Transfer Act becomes law.

Section 11.2. Except as otherwise provided in this act, this act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 301

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

H301-ARU-002 Page 1 of __

Date 7-29 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator

moves to amend the bill on page 4, lines 14,
by deleting the word "direct"; and

on page 5, line 33,
by deleting the word "obligor." and substituting the words "obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure."; and

on page 14, line 12,
by deleting the word "case," and substituting the words "court action,"; and

on page 15, line 41,
by inserting between the words "or" and "with" the following words "has been found by the court not to be in compliance"; and

on page 16, line 10,
by deleting the word "are" and substituting the words "have been found by the court to be"; and

on page 19, line 13,
by deleting the word "is" and substituting the words "has been found by the court to be"; and

on page 25, line 37,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 301

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

H301-ARU-002 Page 2 of __

by deleting the words "arrearages occur." and substituting the words "the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 301

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

H301-ARU-001



Date 7-29 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator

moves to amend the bill on page 21, lines 9 through 11, by rewriting the lines to read:
"§ 50-13.12. Forfeiture of ~~Licensing Privileges for Failure to Pay Child Support.~~ licensing privileges for failure to pay child support or for failure to comply with subpoena issued pursuant to child support or paternity establishment proceedings."; and

on page 25, lines 17 through 20, by rewriting the lines to read:
~~a.~~ ~~The~~ date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one ~~month;~~ month, or
~~b.~~ ~~The~~ the date on which the obligor or obligee requests"; and

on page 25, line 27, by rewriting the line to read:
"support payable for one month; ~~or~~"; and

on page 25, lines 43 and 44, by rewriting the lines to read:
"equal to the support payable for one ~~month or~~ month, on the obligor's request for ~~withholding~~ ~~or~~ withholding, on the obligee's request"; and

on page 43, line 18 through page 44, line 4, by deleting the lines; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 301

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

H301-ARU-001 Page 2 of __

on page 44, lines 10 through 12,
by deleting the lines and renumbering the remaining section
accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 301

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

H301-ARU-150A



Date 7-29 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator

moves to amend the bill on page 8, line 36 through 41, by rewriting the lines to read:
"1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. ~~405(c)(2)(C)(v),~~ 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws or to assist the State Child Support Enforcement Program in establishing paternity or establishing or enforcing child support and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. ~~405(c)(2)(C)(vii).~~ 408, and amendments thereto.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**G.S. 1A-1. Rule 5**

(a) .....

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

## ARTICLE 9.
## CHILD SUPPORT

**§110-128. Purposes.**

The purposes of this Article are to provide for the financial support of dependent children; to enforce spousal support when a child support order is being enforced; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 1; 1985, c. 506, s. 2.)

**§ 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 enforcement 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.)

**§110-130. Action by the designated representatives of the county commissioners.**

Any county interested in the paternity and/or support of a dependent child may institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. Such action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon

information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 4; 1985, c. 410.)

**§ 110-130.1. Non-AFDC services.**

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of ten dollars ($10.00).

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-AFDC arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client. (1983, c. 527, s. 1; 1985, c. 781, ss. 1-5; 1985 (Reg. Sess., 1986), c. 931, ss. 1-3; 1989, c. 490; 1995, c. 538, s. 3.)

**§110-130.2. Collection of spousal support.**

Spousal support shall be collected for a spouse or former spouse with whom the absent parent's child is living when a child support order is being enforced under this Article. However, the spousal support shall be collected: (i) only if there is an order establishing the support obligation with respect to such spouse; and (ii) only if an order establishing the support obligation with respect to the child is being enforced under this Article. The Child Support Enforcement Program is not authorized to assist in the establishment of a spousal support obligation. (1985, c. 506, s. 1.)

**§110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.**

(a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than one hundred dollars ($100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50. (1975, c. 827, s. 1.)

**§ 110-132. Acknowledgment of paternity and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a written agreement to support said child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Such written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the district court of an acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior

court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be **res judicata** as to that issue and shall not be reconsidered by the court. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 5, 6; 1981, c. 275, s. 8; 1989, c. 529, s. 8.)

**§ 110-132.1. Paternity determination by another state entitled to full faith and credit.**

A paternity determination made by another state:

(1) In accordance with the laws of that state, and

(2) By any means that is recognized in that state as establishing paternity

shall be entitled to full faith and credit in this State. (1993 (Reg. Sess., 1994), c. 733, s. 2.)

**§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 7; 1995, c. 538, s. 5.)

**§110-134. Filing of affirmations, acknowledgments, agreements and orders; fees.**

All affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110- 133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be four dollars ($4.00). (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 8.)

**§110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be

entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 9, 10.)

**§110-136. Garnishment for enforcement of child-support obligation.**

(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than forty percent (40%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer in accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except that the alleged employer third-party garnishee shall have 10 days from the date of service of process to answer both the motion to join him as a defendant garnishee and the motion for the wage garnishment order.

(b1) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may in an independent proceeding petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the alleged-employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be

based on information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Human Resources.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 11, 12; 1979, c. 386, ss. 1-8; 1983 (Reg. Sess., 1984), c. 1047, s. 1; 1985, c. 660, s. 2.)

**§110-136.1. Assignment of wages for child support.**

Pursuant to G.S. 50-13.4(f) (1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court. The amount assigned shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the employer for each payment under the order. (1981, c. 275, s. 7; 1983 (Reg. Sess., 1984), c. 1047, s. 2.)

**§ 110-136.2. Use of unemployment compensation benefits for child support.**

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support agency to satisfy a child support obligation or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Upon notification of a voluntary assignment by the Department of Human Resources, the Employment Security Commission shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the Employment Security Commission to the Department of Human Resources for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the Employment Security Commission receives notification from the Department of Human Resources of an express written revocation by the responsible parent.

(e) The Department of Human Resources shall ensure that payments received under this section are properly credited against the responsible parent's child support obligation.

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Human Resources shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Human Resources pursuant to G.S. 96-17. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Human Resources, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8. (1983, c. 33, s. 1; 1987, c. 764, ss. 1, 2.)

**§ 110-136.3. Income withholding procedures; applicability.**

(a) Required Contents of Support Orders. All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall:

(1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address;
(2) Repealed by Session Laws 1993, c. 517, s. 1.
(2a) Repealed by Session Laws 1993, c. 517, s. 1.
(3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income;
(4) Require the custodial party to keep the obligor informed of (i) the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income and (ii) the current residence and mailing address of the child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes; and
(5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the earliest of:
   a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or
   b. The date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:
   a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or
   b. The date on which the obligor requests withholding; or
   c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(c) Repealed by Session Laws 1993, c. 517, s. 1.

(d) Interstate cases. An interstate case is one in which a child support order of one state is to be enforced in another state.

(1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:
   a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;
   b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;
   c. A sworn statement of arrearages;
   d. The name, address, and social security number of the obligor, if known;
   e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and
   f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.

(4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(e) Procedures and regulations. Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Human Resources or the Secretary's designee and the Administrative Office of the Courts. Forms and

instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1; 1989, c. 601, s. 2; 1993, c. 517, s. 1.)

**§ 110-136.4. Implementation of withholding in IV-D cases.**

(a) Withholding based on arrearages or obligor's request.

(1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(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 or on the obligor's request for withholding or on the obligee's request for withholding;

b. The amount of overdue support, 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;

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.

(3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall

promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served 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.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1989, c. 601, s. 3.)

**§ 110-136.5. Implementation of withholding in non-IV-D cases.**

(a) Withholding Based on Delinquent or Erratic Payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1) The motion or complaint shall be verified and state, to the extent known:

a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
b. Either:
1.That the obligor is currently delinquent in making child support payments; or
2.That the obligor has been erratic in making child support payments;
c. The amount of overdue support and the total amount sought to be withheld;
d. The name of each child for whose benefit support is payable; and
e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1) A written request for withholding shall state:
a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
b. Whether the obligor is delinquent and the amount of any overdue support;
c. The name of each child for whose benefit support is payable;
d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar ($2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
Forty percent (40%) if there is only one order for withholding;
Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2) A written request for withholding shall be filed in the office of the clerk of superior court to which the obligor is directed to make child support payments. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

(1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or

(2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

(3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

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.)

**§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.)

**§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.

(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.)

**§110-137. Acceptance of public assistance constitutes assignment of support rights to the State or county.**

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The State or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 13.)

**§110-138. Duty of county to obtain support.**

Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 14.)

**§110-138.1. Duty of judicial officials to assist in obtaining support.**

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to a magistrate for issuance of criminal process against the responsible parent for violation of G.S. 14-322. If the magistrate determines that the applicant has

failed to receive the ordered support for two consecutive months, and that the responsible parent has willfully neglected or refused to make such payments, he shall make a finding of probable cause and issue criminal process for violation of G.S. 14-322. It shall be the duty of the District Attorney to prosecute such charges according to law. It shall be the duty of the Clerk of Superior Court to assist the applicant in making such application to the magistrate for the issuance of criminal process, and to supply such necessary child support records as are in his possession to the magistrate, District Attorney, and the Court. (1981, c. 613, s. 4.)

**§ 110-139. Location of absent parents.**

(a) The Department of Human Resources shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. All nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records.

(c) Notwithstanding any other provision of law making such information confidential, an employer doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to enforce an order for child support: full name, social security account number, date of birth, home address, wages, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes.

(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company or financial institution. A utility company or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure.

(e) Subsection (d) of this section shall not apply to telecommunication utilities or providers of electronic communication service to the general public. (1975, c. 827, s.

1; 1977, 2nd Sess., c. 1186, s. 15; 1987, c. 591; 1991, c. 419, s. 1; 1995, c. 538, s. 4.)

**§110-139.1. Access to federal parent locator service; parental kidnapping and child custody cases.**

(a) The parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any absent parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody determination.

(b) For the purpose of this section, custody determination means a judgment, decree, or other order of the court providing for the custody or visitation of a child and includes permanent or temporary orders, and initial orders and modifications.

(c) All nonjudicial records maintained by the Department pertaining to the unlawful taking or restraint of a child or child custody determinations shall be confidential, and only individuals directly connected with the administration of the child support enforcement program and those authorized herein shall have access to these records. (1983, c. 15, s. 1.)

**§110-140. Conformity with federal requirements.**

Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. (1975, c. 827, s. 1.)

**§110-141. Effectuation of intent of Article.**

The North Carolina Department of Human Resources shall supervise the administration of this program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

Effective July 1, 1986, the entity, whether the board of county commissioners or the Department of Human Resources, that is administering, or providing for the administration of, this program in each county on June 30, 1986, shall continue to administer, or provide for the administration of, this program in that county, with one exception. If a county program is being administered by the Department of Human Resources on June 30, 1986, and if the board of county commissioners of this county desires on or after that date to assume responsibility for the administration of the program, the board of county commissioners shall notify the Department of Human Resources between July 1 and September 1 of the current fiscal year. The obligations of the board of county commissioners to assume responsibility for the administration of the program shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it is the responsibility of the Department of Human Resources to administer or provide for the administration of the program in the county.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 16; 1979, c. 488; 1983 (Reg. Sess., 1984), c. 1034, s. 76; 1985, c. 244; c. 479, s. 103; 1985 (Reg. Sess., 1986), c. 1014, s. 129.)

**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.**

The definitions in G.S. 110-129 and G.S. 147-54.12 apply to this section and G.S. 110-142.1, and G.S. 110-142.2. In addition, to these sections the following definitions apply:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any department, division, agency, officer, board, or other unit of State government that issues licenses.

(3) "Certified list" means a list provided by the designated representative to the Department of Human Resources that verifies, under penalty of perjury, that the names contained therein are obligors who have been found to be out of compliance with a judgment or order for support in a IV-D case.

(4) "Compliance with an order for support" means that, as set forth in a judgment or order for child support or family support, the obligor is no more than 90 calendar days in arrears in making payments for current support, in making periodic payments on a support arrearage, or in making periodic payments on a reimbursement for public assistance, has obtained a judicial finding that precludes enforcement of the order, or has entered into a payment schedule, including G.S. 110-142.1(h), for the child support arrearage with the approval of the obligee in a IV-D case.

(5) "License" means (i) for the purposes of G.S. 110-142.1, a license, certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession or (ii) for the purposes of G.S. 110-142.2, a license to operate a regular or commercial motor vehicle, or to participate in hunting, fishing, or trapping.

(6) "Licensee" means any person holding a license.

(7) "Obligor" means the individual who owes a duty to make child support payments under a court order. (1995, c. 538, s. 1.4.)

**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.**

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child support.

(b) The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in, a court of this State, and who are not in compliance with that order. The designated representative shall submit a certified list with the names, social security numbers, and last known address of these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office. The designated representative shall verify, under penalty of perjury, that the obligors listed are subject to an order for the payment of support and that these persons are not in compliance with the order. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of its obligors, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of obligors from the Department of Human Resources, each board shall determine whether its applicant or licensee is an obligor on the list. If the applicant or licensee is an obligor on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the obligor's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the obligor's license 20 days from the date of the notice to the obligor of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the obligor.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the obligor that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the obligor. The Department of Human Resources shall also develop a form that the obligor shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an obligor to have the underlying arrearage and any relevant defenses investigated, to provide an obligor information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an obligor assistance in the establishment of a payment schedule on arrears.

(h) If the obligor wishes to challenge the submission of the obligor's name on the certified list or negotiate a payment schedule, the obligor shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the obligor's request for review notify the appropriate board of the obligor's request for review and direct the board to stay any action revoking or suspending the obligor's license until further notice from the designated representative. The designated representative shall review the obligor's case and inform the obligor in writing of the representative's findings and decision upon completion of the review. The designated representative shall immediately send a notice to the appropriate board certifying the obligor's compliance with this section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the obligor fails to meet the conditions of this subsection, the designated

representative shall notify the appropriate board to immediately revoke or suspend the obligor's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the obligor's license.

(i) The designated representative shall notify the obligor in writing that the obligor may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the obligor shall file the motion and inform the obligor that the obligor's name shall remain on the certified list unless the judicial review results in a finding by the court that the obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this section. The notice shall also inform the obligor that the obligor must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the obligor upon the designated representative who submitted the obligor's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the obligor is no longer in arrears or that the obligor's license should be reinstated to allow the obligor an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the obligor's compliance with this section. In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the obligor is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement as provided in subsection (h) of this section, the designated representative shall mail to the obligor and the appropriate board a notice certifying that the obligor is in compliance. The receipt of certification shall serve to notify the obligor and the board that, for the purposes of this section, the obligor is in compliance with the order for support.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. (1995, c. 538, s. 1.4.)

**§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an obligor is at least 90 days in arrears in making child support payments, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

(1) Revoking the obligor's regular or commercial license to operate a motor vehicle;
(2) Revoking the obligor's hunting, fishing, or trapping licenses;
(3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the obligor's motor vehicle.

(b) Upon finding that the obligor has willfully failed to comply with the child support order, and that the obligor is at least 90 days in arrears, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. Upon entry of an order pursuant to this section that is not stayed, the obligor shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the obligor's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the obligor's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An obligor whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An obligor may file a request with the child support enforcement agency for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the obligor has paid the delinquent amount in full. The child support enforcement agency shall provide a form to be used by the obligor for a request for certification. If the child support enforcement agency finds that the obligor has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor.

(e) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the obligor's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the obligor's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the obligor violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the obligor's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process. (1995, c. 538, s. 1.4.)

described in paragraph (1), (2), (3), (4), (5), or (7) of subsection (d).

"(2) LIMITATIONS AND SPECIAL RULES.—

"(A) NUMBER OF WEEKS FOR WHICH JOB SEARCH COUNTS AS WORK.—

"(i) LIMITATION.—Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States, 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

"(ii) LIMITED AUTHORITY TO COUNT LESS THAN FULL WEEK OF PARTICIPATION.—For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

"(B) SINGLE PARENT WITH CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS IF PARENT IS ENGAGED IN WORK FOR 20 HOURS PER WEEK.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient in a 1-parent family who is the parent of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

"(C) TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is a single head of household and has not attained 20 years of age is deemed, subject to subparagraph (D) of this paragraph, to be engaged in work for a month in a fiscal year if the recipient—

"(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

"(ii) participates in education directly related to employment for at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection.

"(D) NUMBER OF PERSONS THAT MAY BE TREATED AS ENGAGED IN WORK BY VIRTUE OF PARTICIPATION IN VOCATIONAL EDUCATION ACTIVITIES OR BEING A TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph.



"(d) WORK ACTIVITIES DEFINED.—As used in this section, the term 'work activities' means—

"(1) unsubsidized employment;

"(2) subsidized private sector employment;

"(3) subsidized public sector employment;

"(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

"(5) on-the-job training;

"(6) job search and job readiness assistance;

"(7) community service programs;

"(8) vocational educational training (not to exceed 12 months with respect to any individual);

"(9) job skills training directly related to employment;

"(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

"(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

"(12) the provision of child care services to an individual who is participating in a community service program.

"(e) PENALTIES AGAINST INDIVIDUALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

"(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

"(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

"(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

"(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

"(C) Unavailability of appropriate and affordable formal child care arrangements.

"(f) NONDISPLACEMENT IN WORK ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Thursday, July 31, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **923** Commercial Realtor Lien Act

| | |
|---|---|
| Draft Number: | PCS 4636 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **1064** Housing Authority Amendments

| | |
|---|---|
| Draft Number: | PCS A402 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 2

Committee Clerk Comment: Will take to Sen. Cooper

VISITOR REGISTRATION SHEET

J-1

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Mike Carpenter | NCHSA |
| [illegible] | NC Association of REALTORS |
| David Ferrell | Hyde, McNamara, Caldwell et al |
| Anne Graves Whitaker | NCAR |
| Alan Wiles | Bailey & Dixon LLP |
| Curt Williams | Gov's Office |
| A.A. Adams | Victim Advocate |
| [illegible] | NC [illegible] |
| H. Webb | Raleigh |
| Patricia Reeder | DHR |
| ANGIE McMILLAN | DHR |
| THOMAS G. BEATTIE | WAKE FOREST |
| Dave [illegible] | SAFESHIT |
| Roslyn Sawtt | [illegible] |
| [illegible] | [illegible] |
| BEN MILES | GRASS ROOTS NORTH CAROLINA |
| [illegible] | NCBA |
| Charles Cramer | NCATL |
| Dick Taylor | NCATL |
| Carrie Hadley | Office of Gov |
| [illegible] | DOC |
| BILL SCOGGIN | NCBA |
| [illegible] | NCBA |

VISITOR REGISTRATION SHEET

J-1

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Nancy Bradley | NCCBD |
| M L Adams | DMR / DSS |
| Ronald K. Hoffman | Dept of Justice |
| B Little | DSSCSE |
| Barry Bynum | DSS/CSE |
| Kathrine A. Yancey | SCSL/APPCNC |
| John Borchek | Zeb Alley P.A. |
| Brenda Dongherty | Sprint |
| Jean M Kuhlow | Moore - Van Allen |
| Veronica Davis | Womble Carlyle |
| Danny Coffey | NCCCA |
| PA | NCTB |
| THodges | NRA |
| JD McLees | TDA |
| Richard Lange | N.C. Bar |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# AUGUST 7, 1997

The Senate Judiciary Committee met on Thursday, August 7, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Rep. Sherrill to explain **House Bill 652** - AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE STATUTES GOVERNING THE OFFICE OF THE STATE AUDITOR.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 652 for discussion. The motion carried by voice vote.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Hunter was recognized to explain **House Bill 1132** - AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS WITH THE INTENT OF COMMITTING A CRIME AGAINST THAT PERSON.

Senator Miller moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

Senator Reeves moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Baker was recognized to explain **House Bill 1087** - AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR.

Senator Ballance moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

Senator Allran moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 301** - AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

Senator Lucas moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 14, Lines 1 and 2. (Amendment attached.) The motion carried by voice vote.

Andrew Vanoy, with the Attorney General's office, was recognized to answer questions from the Committee.

Senator Reeves moved to amend the Proposed Committee Substitute on Page 4, Line 18 and Page 6, Lines 17 and 18. (Amendment attached.) The motion carried by voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 43, Lines 34 and 35 and on Page 43 by renumbering the remaining sections of part 11 accordingly. (Amendment attached.) The motion carried by voice vote.

Mike Adams, with the Division of Social Services, was recognized to answer questions from the Committee.

Senator Horton moved to amend the Proposed Committee Substitute on Page 2, Line 22. (Amendment attached.) After discussion, the amendment was withdrawn.

Senator Lucas moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried.

There being no further business, the meeting was adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# August 7, 1997

| | | |
|---|---|---|
| HB 301 | Child Support/Federal Requirements | Gardner |
| HB 652 | Audits | Sherrill |
| HB 1087 | Motorized Vehicle Trespass | Baker |
| HB 1132 | Date Rape Drugs | Hunter |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 652
Committee Substitute Favorable 4/28/97

Short Title: Audits. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE STATUTES GOVERNING THE OFFICE OF THE STATE AUDITOR.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 147 is amended by adding a new section to read as follows:

"**§ 147-64.7.1. Obstruction of audit.**

Any person who shall willfully make or cause to be made to the State Auditor or his designated representatives any false, misleading, or unfounded report for the purpose of interfering with the performance of any audit, special review, or investigation, or to hinder or obstruct the State Auditor or the State Auditor's designated representatives in the performance of their duties, shall be guilty of a Class I felony."

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

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August 5, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **HOUSE BILL 652 - AUDITS**
**Proposed Committee Substitute**
Representative Sherrill

**Subcommittee Recommendation: Favorable to Committee Substitute.** The subcommittee recommends that the offense be classified as a Class 2 misdemeanor, rather than a Class I felony as proposed in the House version of the bill. The subcommittee considered the fact that the language in the new statute parallels the language in G.S. 14-225 (False Reports to Law Enforcement Agencies or Officers), which is a Class 2 misdemeanor. The subcommittee determined that the offense created by the bill is in fact comparable to hindering a police investigation, and is not comparable to existing felony perjury offenses which involve false statements made under oath or affirmation. A copy of the fiscal note for the original bill is attached. Also attached to this memorandum is a sampling of statutes relating to various offenses of false reporting and perjury.

The proposed committee substitute for House Bill 652 makes it a Class 2 misdemeanor to make a false report for the purpose of interfering with an audit or investigation or to otherwise hinder or obstruct the State Auditor or his designated representatives in the performance of their duties. A Class 2 misdemeanor, assuming no prior convictions, is punishable by 1-30 days community punishment and/or a fine up to $1,000.

This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

## Misdemeanor Offenses

**§ 14-225. False reports to law enforcement agencies or officers.**
Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

**§ 14-232. Swearing falsely to official reports.**
If any clerk, sheriff, register of deeds, county commissioner, county treasurer, magistrate or other county officer shall willfully swear falsely to any report or statement required by law to be made or filed, concerning or touching the county, State or school revenue, he shall be guilty of a Class 1 misdemeanor.

**§ 113-275. General provisions respecting licenses and permits.**
....(j) It is a Class 1 misdemeanor for any person:
...(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article....

**§ 115C-276. Duties of superintendent.** (Public Education)
....(p) Any superintendent who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor.....

**§ 160A-80. Power of investigation; subpoena power.** (City Council)
(a) The council shall have power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.
(b) ....If any person, while under oath at an investigation by the council, willfully swears falsely, he is guilty of a Class 1 misdemeanor....

## Felony Offenses

**§ 14-209. Punishment for perjury.**
If any person shall willfully and corruptly commit perjury, on his oath or affirmation, in any suit, controversy, matter or cause, depending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, every person so offending shall be punished as a Class F felon.

**§ 7A-456. False statements; penalty.**
(a) A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.

**§ 58-2-180. Punishment for making false statement.** (to Commissioner of Insurance)
If any person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement is guilty of a Class I felony; and the entity on whose behalf the person made the oath or subscribed the statement is subject to a fine imposed by the court of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000).

**§ 14-211. Perjury before legislative committees.**
If any person shall willfully and corruptly swear falsely to any fact material to the investigation of any matter before any committee or commission of either house of the General Assembly, he shall be subject to all the pains and penalties of willful and corrupt perjury, and, on conviction in the Superior Court of Wake County, shall be punished as a Class I felon.

**§ 20-31. Making false affidavits perjury.** (Motor Vehicle Act)
Any person who shall make any false affidavit, or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this Article to be sworn to or affirmed shall be guilty of a Class I felony.

**§ 58-79-10. Powers of Attorney General in (fire) investigations.**
The Attorney General, or his deputy appointed to conduct such examination, has the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by provisions of this Article a subject of inquiry and investigation, and may administer oaths and affirmations to persons appearing as witnesses before them. False swearing in any such matter or proceeding is perjury and shall be punished as such.....

**§ 163-90.3. Making false affidavit perjury.** (Elections, Challenges)
Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of a Class I felony.

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 652

SHORT TITLE: Audits

SPONSOR(S): Representative Sherrill

### FISCAL IMPACT

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

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| GENERAL FUND | | | | | |
| Correction | | | No Fiscal Impact | | |
| Recurring | | | | | |
| Nonrecurring | | | | | |
| Judicial | | | No Fiscal Impact | | |
| 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: Effective when it becomes law.

BILL SUMMARY: AUDITS. *TO MAKE TECHNICAL AMENDMENTS TO THE STATUTES GOVERNING THE OFFICE OF THE STATE AUDITOR.* Amends GS 147-64.10 to allow State Auditor to waive accounting requirements established by State Personnel Comm'n in making appointments to auditor and management positions. Adds new GS 147-64.7.1 to make it a class 3 misdemeanor to provide false or misleading information to representatives of the State Auditor for the purpose of hindering or obstructing an audit.

AUDITS. Intro. 3/27/97. House committee substitute replaces 1st edition. Deletes amendment to GS 147-64.10 that would have allowed Auditor to waive accounting requirements for auditor and management positions. Rev new GS 147-64.7.1 to make obstruction of audit a class I felony (was, a class 3 misdemeanor). [1]

ASSUMPTIONS AND METHODOLOGY:

*Judicial Branch*

The Judicial Branch does not anticipate this bill to have a fiscal impact on the court system. The Administrative Office of the Courts' Court Information System has no offense code for the obstruction of audits. This is one indicator of the probable infrequency of cases of this nature. The court system can handle, within existing resources, any additional cases that may arise out of this bill.

*Department of Correction*

The Sentencing and Policy Advisory Commission does not expect this bill to have any impact on the state prison system. Considering the Judicial Branch's analysis, the Sentencing Commission notes they can absorb any new convictions within existing Department of Correction resources.

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

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Andy Willis
APPROVED BY: Tom L. Covington
DATE: June 19, 1997

---

*Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 34.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H652-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 652
Committee Substitute Favorable 4/28/97

THIS IS A DRAFT 4-AUG-97 12:51:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Audits. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING THE OFFICE OF THE STATE AUDITOR TO PROHIBIT OBSTRUCTION OF AN AUDIT.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 147 is amended by adding a new section to read as follows:

"§ 147-64.7A. Obstruction of audit.

Any person who shall willfully make or cause to be made to the State Auditor or his designated representatives any false, misleading, or unfounded report for the purpose of interfering with the performance of any audit, special review, or investigation, or to hinder or obstruct the State Auditor or the State Auditor's designated representatives in the performance of their duties, shall be guilty of a Class 2 misdemeanor."

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

*NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION*

# ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 65 / AUDIT'S (Committee Substitute 4/28/97)

## STATUTE

§147-64.7.1. Obstruction of audit.

## DESCRIPTION

A person
1. willfully makes or causes to be made
2. to the State Auditor or his designated representatives
3. any false, misleading, or unfounded report
4. for the purpose of
   (a) interfering with the performance of any audit, special review, or investigation, or
   (b) to hinder or obstruct the State Auditor or his designated representatives in the performance of their duties.

## PROPOSED OFFENSE CLASS

Class I felony

## ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in societal injury as Class I felonies.

## FINDINGS

☒ Bill is **consistent** with Offense Classification Criteria

☐ Bill is **inconsistent** with Offense Classification Criteria

DATE PREPARED: 6/26/97

**IMPACT OF BILL ON NEXT PAGE**

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support or opposition to the bill itself.

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## HOUSE BILL 652: AUDITS (committee substitute)

## ESTIMATED ADDITIONAL PRISON INMATES

Because this bill establishes a new felony offense, there is no historical conviction data available from which to estimate its impact. However, best estimates indicate that if there are 20 convictions each year for this offense, it could increase prison populations by one inmate per year; if there are 40 convictions each year for this offense, it could increase prison populations by two inmates per year.

***END***

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1132
Committee Substitute Favorable 4/29/97

Short Title: Date Rape Drugs. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS WITH THE INTENT OF COMMITTING A CRIME AGAINST THAT PERSON.

The General Assembly of North Carolina enacts:

Section 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.15. Contaminate food or drink to render one mentally incapacitated or physically helpless.**

(a) It is unlawful knowingly to place a controlled substance, chemical, compound, or any foreign substance that would render a person mentally incapacitated or physically helpless into any food, drink, or other edible or potable substance with the intent of causing another person to be mentally incapacitated or physically helpless.

(b) It is unlawful knowingly to manufacture, sell, deliver, or possess with the intent to manufacture, sell, deliver, or possess a controlled substance, chemical, compound, or any foreign substance for the purpose of violating subsection (a) of this section.

(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. 14-27.3 or G.S. 14-27.5, the violation is a Class G felony."

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

**North Carolina General Assembly**
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July 24, 1997

MEMORANDUM

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** Brenda J. Carter, Committee Counsel

**RE:** **HOUSE BILL 1132 - DATE RAPE DRUGS**
**Proposed Committee Substitute**
Representative Bob Hunter

**Subcommittee Recommendation: Favorable to Committee Substitute.** The subcommittee accepted the provisions of a proposed committee substitute offered by the bill sponsor that would add the drug GHB to the list of Schedule IV controlled substances. The subcommittee rejected a proposal which would make it a Class 3 misdemeanor to knowingly misrepresent to another person that a beverage containing alcohol was nonalcoholic (i.e. "spiking" punch). A copy of the fiscal note is attached.

**Section 1** adds Gamma Hydroxybutyric Acid (GHB) to the list of Schedule IV Controlled Substances. GHB is not approved in the U.S. and has been banned from over-the-counter sale by the FDA. Reportedly, small doses of GHB produce relaxation, tranquillity and drowsiness which make it extremely easy to fall asleep. Higher doses increase the drowsiness effect and decrease the time it takes to fall asleep. A sufficiently large dose of GHB will induce sudden sleep within five to ten minutes. GHB has not yet been scheduled as a controlled substance by the DEA, and therefore simple possession is not illegal. Classifying GHB as Schedule IV makes it a Class I felony to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver the drug. It also makes simple possession a Class 1 misdemeanor.

**Section 2** adds a new section to Chapter 14, making it a criminal offense to knowingly contaminate food or drink with any substance that would render a person mentally incapacitated or physically helpless with the intent of causing another person to be mentally incapacitated or physically helpless. The bill also makes it unlawful to manufacture, sell, deliver, or possess with intent to manufacture, sell or deliver such a substance for the aforementioned purpose.

Violation of this section is a Class H felony, which, at prior record level I, has a presumptive sentence of 5-6 months community, intermediate or active punishment. However, if the offender violates this section with the intent of committing second degree rape or second degree sexual offense, the violation is a Class G felony, with a sentence of 10-13 months of intermediate or active punishment.

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

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 1132 2nd Edition (committee substitute 4/29/97)

**SHORT TITLE:** Date Rape Drugs

**SPONSOR(S):** Representative R Hunter

### FISCAL IMPACT

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

**(in millions)**

| | FY 1997-98 | FY 1998-99 | FY 1999-00 | FY 2000-01 | FY 2001-02 |
|---|---|---|---|---|---|
| **GENERAL FUND** | | | | | |
| **Correction** | | | | | |
| **Judicial** | **NO ESTIMATE AVAILABLE** | | | | |
| **[redacted]AL EXPENDITURES** | | | | | |

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

**EFFECTIVE DATE:** December 1; applies to offenses on or after that date.

**BILL SUMMARY: H 1132. DATE RAPE DRUGS.** *TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS* Adds new GS 14-401.15 as title indicates. Also makes it unlawful to manufacture, sell, deliver, or possess with the intent to manufacture, sell, or deliver, a controlled substance, chemical compound, or foreign substance for purpose of rendering person mentally incapacitated or physically helpless. Violation is a class H felony, or a class G felony if person violates section with intent of committing second-degree rape or second-degree sexual offense.

**ASSUMPTIONS AND METHODOLOGY:**

Because this bill establishes a new category of offense, there is no information available to predict the frequency of the crime. Without any historical information, neither the Judicial Branch nor the Sentencing Commission can predict the number of charges, convictions or inmates that might result.

The penalties that would apply for any convictions are as follows: Class G felonies are eligible for intermediate or active punishments for prior record levels I-IV and have required active sentences for levels V and VI. The length of sentence ranges from 10-13 months at level I to 23-29 months at level VI.

[redacted] H felons are eligible for community/intermediate/active sentences at level I, for intermediate/active at [redacted]s II-V and for active sentences at level VI. The length of sentence ranges from 5-6 months at level I to 16-20 months at level VI.

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

**TECHNICAL CONSIDERATIONS: None**

**FISCAL RESEARCH DIVISION**
**733-4910**
**PREPARED BY:** Elisa Wolper
**APPROVED BY:** Tom L. Covington**TomC**
**DATE:** April 30, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1132
Committee Substitute Favorable 4/29/97
Proposed Committee Substitute H1132-CSRV-5
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Date Rape Drugs. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DRUGS TO SCHEDULE IV OF THE LIST OF CONTROLLED SUBSTANCES, TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY CONTROLLED SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS, OR TO MANUFACTURE OR POSSESS SUCH A CONTROLLED SUBSTANCE UNLESS IT IS FOR MEDICAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-92(a) reads as rewritten:

"(a) Depressants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Alprazolam.
2. Barbital.
3. Bromazepam.
4. Camazepam.
5. Chloral betaine.
6. Chloral hydrate.

7. Chlordiazepoxide.
8. Clobazam.
9. Clonazepam.
10. Clorazepate.
11. Clotiazepam.
12. Cloxazolam.
13. Delorazepam.
14. Diazepam.
15. Estazolam.
16. Ethchlorvynol.
17. Ethinamate.
18. Ethyl loflazepate.
19. Fludiazepam.
20. Flunitrazepam.
21. Flurazepam.
22a. Gamma Hydroxybutyric Acid.
22. Halazepam.
23. Haloxazolam.
24. Ketazolam.
25. Loprazolam.
26. Lorazepam.
27. Lormetazepam.
28. Mebutamate.
29. Medazepam.
30. Meprobamate.
31. Methohexital.
32. Methylphenobarbital (mephobarbital).
33. Midazolam.
34. Nimetazepam.
35. Nitrazepam.
36. Nordiazepam.
37. Oxazepam.
38. Oxazolam.
39. Paraldehyde.
40. Petrichloral.
41. Phenobarbital.
42. Pinazepam.
43. Prazepam.
44. Quazepam.
45. Temazepam.
46. Tetrazepam.
47. Triazolam.
48. Zolpidem."

Section 2. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-401.15. Contaminate food or drink to render one mentally incapacitated or physically helpless.

(a) It is unlawful knowingly to contaminate any food, drink, or other edible or potable substance with a controlled substance as defined in G.S. 90-87(5) that would render a person mentally incapacitated or physically helpless with the intent of causing another person to be mentally incapacitated or physically helpless.

(b) It is unlawful knowingly to manufacture, sell, deliver, or possess with the intent to manufacture, sell, deliver, or possess a controlled substance as defined in G.S. 90-87(5) for the purpose of violating this section.

(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. 14-27.3 or G.S. 14-27.5, the violation is a Class G felony.

(d) This act does not apply if the controlled substance added to to the food, drink, or other edible or potable substance is done at the direction of a licensed physician as part of a medical procedure or treatment with the patient's consent."

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 2

HOUSE BILL 1087
Committee Substitute Favorable 4/29/97

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.

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July 24, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **HOUSE BILL 1087 - MOTORIZED ALL TERRAIN VEHICLE TRESPASS -** Representative Baker

House Bill 1087 would create the offense of trespass by the unauthorized operation of a motorized all terrain vehicle on the property of another.

The bill would make it a Class 1 misdemeanor to operate a motorized all terrain vehicle in three different places without the consent of the owner:

1. Any private property not owned by the operator.
2. Within the banks of a stream or waterway where the adjacent lands are not owned by the operator, or outside the restrictions imposed by the owner.
3. Within 25 feet of the banks of any stream, waterway, lake or pond where the adjacent lands are not owned by the operator.

A motorized all terrain vehicle is defined as a two-, three-, or four-wheeled vehicle designed for recreational off-road use.

Under this bill this form of trespass could be punished more severely than first degree trespass (entering the building or premises of another enclosed or secured as to state intent to keep out intruders without permission - G.S. 14-159.12 (attached)), which is a Class 2 misdemeanor; second degree trespass (entering the premises of another without permission when notified not to or when the premises are posted - G.S. 14-159.13 (attached)), which is a Class 3 misdemeanor; or operating a motor vehicle on utility easements after being forbidden to do so (G.S. 14-134.2), which is a Class 3 misdemeanor. Operation of a motorized all terrain vehicle without consent on a posted utility easement will be punished as a Class 3 misdemeanor, not a Class 1 misdemeanor, because G.S. 14-134.2 would be a lesser included offense of this new statute. If operation of a motorized all terrain vehicle would result in injury or damage to the property of another, the punishment would be consistent with the punishment for

willful and wanton injury to real property (G.S. 14-127), and injury to trees, crops, lands, etc. of another (G.S. 14-128), which are both punished as Class 1 misdemeanors.

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

**§ 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.

**§ 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.

**§ 14-134.2. Operating motor vehicle upon utility easements after being forbidden to do so.**

If any person, without permission, shall ride, drive or operate a minibike, motorbike, motorcycle, jeep, dune buggy, automobile, truck or any other motor vehicle upon a utility easement upon which the owner or holder of the easement or agent of the owner or holder of the easement has posted on the easement a "no trespassing" sign or has otherwise given oral or written notice to the person not to so ride, drive or operate such a vehicle upon the said easement, he shall be guilty of a Class 3 misdemeanor, provided, however, neither the owner of the property nor the holder of the easement or their agents, employees, guests, invitees or permittees shall be guilty of a violation under this section.

**§ 14-127. Willful and wanton injury to real property.**

If any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.

**§ 14-128. Injury to trees, crops, lands, etc., of another.**

Any person, not being on his own lands, who shall without the consent of the owner thereof, willfully commit any damage, injury, or spoliation to or upon any tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, or any other matter or thing growing or being thereon, or who cuts, breaks, injures, or removes any tree, plant, or flower, shall be guilty of a Class 1 misdemeanor: Provided, however, that this section shall not apply to the officers, agents, and employees of the Department of Transportation while in the discharge of their duties within the right-of-way or easement of the Department of Transportation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1087-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 1087
THIS IS A DRAFT 1-AUG-97 16:46:53
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 or more wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 2 misdemeanor."

Section 2. G.S. 14-134.2 reads as rewritten:

"**§ 14-134.2. Operating motor vehicle upon utility easements after being forbidden to do so.**

If any person, without permission, shall ride, drive or operate a minibike, motorbike, motorcycle, jeep, dune buggy, automobile, truck or any other motor ~~vehicle~~ vehicle, other than a motorized all terrain vehicle as defined in G.S. 14-159.3, upon a utility easement upon which the owner or holder of the easement or agent of the owner or holder of the easement has posted on the easement a "no trespassing" sign or has otherwise given oral or written notice to the person not to so ride, drive or operate such a vehicle upon the said easement, he shall be guilty of a Class 3 misdemeanor, provided, however, neither the owner of the property nor the holder of the easement or their agents, employees, guests, invitees or permittees shall be guilty of a violation under this section.

Section 3. 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 3

HOUSE BILL 301
Committee Substitute Favorable 4/28/97
Committee Substitute #2 Favorable 5/15/97

Short Title: Child Support/Fed. Req. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

The General Assembly of North Carolina enacts:

**PART 1. STATE DIRECTORY OF NEW HIRES.**

Section 1. Effective October 1, 1997, Article 1 of Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.**

(a) Directory Established. -- There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. -- Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or

electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. -- Each report required by this section shall contain the name, address, and social security number of the employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. -- Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars ($25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars ($500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. -- Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. -- Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. -- The Employment Security Commission may access information entered into the Directory from employer reports for the purpose of administering employment security programs. The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.

(h) Department May Contract for Services. -- The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. -- Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. -- As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Business day' means a day on which State offices are open for business.

(2) 'Department' means the Department of Human Resources.

(3) 'Employee' means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term 'employee' does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(4) 'Employer' has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term 'labor organization' shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer."

**PART 2. EXPANDED AUTHORITY OF THE DEPARTMENT TO ENFORCE CHILD SUPPORT ORDERS AND TO ESTABLISH PATERNITY.**

Section 2. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.1. Additional powers and duties of the Department.**

(a) In addition to other powers and duties conferred upon the Department of Human Resources, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

(1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon

the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.

(2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have direct access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency of this State for law enforcement purposes.

(3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.

(4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.

(5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.

(6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.

(7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).

(8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:

a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;

b. Implement income withholding in accordance with this Chapter;

c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;

d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.

(b) As used in this section, the term 'Secretary' means the Secretary of Human Resources, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5)."

Section 2.1. (a) G.S. 50-13.4(d) reads as rewritten:

"(d) ~~Payments~~ In non-IV-D cases, 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~~ the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the court or other proper State agency for the benefit of the child."

(b) This section applies to orders entered or modified on and after October 1, 1997.

Section 2.2. G.S. 50-13.4 is amended by adding the following new subsection to read:

"(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer."

**PART 2A. NOTICE/DUE PROCESS REQUIREMENTS.**

Section 2.3. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-131.1. Notice; due process requirements met.**

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice

requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint."

**PART 3. AUTHORIZE JUDGES TO IMPOSE WORK REQUIREMENTS ON OBLIGORS WHO ARE IN ARREARS IN CHILD SUPPORT, AND TO REQUIRE PARENTS TO PROVIDE MEDICAL SUPPORT.**

Section 3. G.S. 110-136.3 is amended by adding the following new subsection to read:

"(a1) Payment Plan/Work Requirement for Past-Due Support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under Section 407(d) of P.L. 104-193, as the court deems appropriate."

Section 3.1. G.S. 50-13.11 reads as rewritten:

"**§ 50-13.11. Orders and agreements regarding medical support and health insurance coverage for minor children.**

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. ~~An order or agreement for medical support may require one or both parties to maintain health insurance, dental insurance, or both, or to pay the medical, hospital, or dental expenses.~~ An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental, or other health care related expenses.

(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance.

(b) The party ordered or under agreement to provide ~~medical~~ health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide ~~medical,~~ health, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide ~~medical,~~ health, hospital, and dental insurance.

(d) When a court order or agreement for ~~medical~~ health insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide ~~medical~~ health insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any

~~medical,~~ health, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.

(f) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan."

Section 3.2. G.S. 108A-69(b) reads as rewritten:

"(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer doing business in this State, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or

2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

**PART 3A. CONFORM STATE TAX INTERCEPT LAW TO FEDERAL REQUIREMENTS.**

Section 3.3. G.S. 105A-2(1)d. reads as rewritten:

"d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9

and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support ~~arrearages~~ owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;".

**PART 4. REQUIREMENT TO PROVIDE SOCIAL SECURITY NUMBERS ON CERTAIN DOCUMENTS.**

Section 4. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. The applicant's social security number shall not be printed on the license and may be released only to the Department of Human Resources, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii)."

Section 4.1. G.S. 49-7 reads as rewritten:

"**§ 49-7. Issues and orders.**

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support an illegitimate child."

Section 4.2. G.S. 49-14(a) reads as rewritten:

"(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~~ The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

Section 4.3. G.S. 50-8 reads as rewritten:

**"§ 50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.**

In all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint, and that the facts set forth therein as grounds for divorce, except in actions for divorce from bed and board, have existed to his or her knowledge for at least six months prior to the filing of the complaint: Provided, however, that if the cause for divorce is one-year separation, then it shall not be necessary to allege in the complaint that the grounds for divorce have existed for at least six months prior to the filing of the complaint; it being the purpose of this proviso to permit a divorce after such separation of one year without awaiting an additional six months for filing the complaint: Provided, further, that if the complainant is a nonresident of the State action shall be brought in the county of the defendant's residence, and summons served upon the defendant personally or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this section, any suit or action for divorce heretofore instituted by a nonresident of this State in which the defendant was personally served with summons or in which the defendant personally accepted service of the summons and the case was tried and final judgment entered in a court of this State in a county other than the county of the defendant's residence, is hereby validated and declared to be legal and proper, the same as if the suit or action for divorce had been brought in the county of the defendant's residence.

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no ~~such~~ minor children of the marriage, the complaint shall so state. In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff and, if known, the social security number of the defendant.

In all prior suits and actions for divorce heretofore instituted and tried in the courts of this State where the averments of fact required to be contained in the affidavit heretofore required by this section are or have been alleged and set forth in the complaint in said suits or actions and said complaints have been duly verified as required by Rule 11 of the Rules of Civil Procedure, said allegations so contained in said complaints shall be deemed to be, and are hereby made, a substantial compliance as to the allegations heretofore required by this section to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce.

In all suits and actions for divorce heretofore instituted and tried in this State on and subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the verification to the complaint in said suits or actions are not in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to verification of complaint or the allegations, statements or averments in the verification contain the language that the facts set forth in the complaint are true 'to the best of affiant's knowledge and belief'

instead of the language 'that the same is true to his (or her) own knowledge' or similar variation in language, said allegations, statements and averments in said verifications as contained in or attached to said complaint shall be deemed to be, and are hereby made, a substantial compliance as to the allegations, averments or statements required by this section to be set forth in any such verifications; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce. The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties."

Section 4.4. G.S. 50-13.4 is amended by adding the following new subsections to read:

"(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Human Resources, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

Section 4.5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 4.6. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"**§ 93B-14. Information on applicants for licensure.**

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only to the State Child Support Enforcement

Program of the Department of Human Resources upon its request and for the purpose of enforcing a child support order."

**PART 4A. PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 4.7. G.S. 110-132(a) reads as rewritten:

"**§ 110-132. Acknowledgment of paternity and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of paternity, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

~~and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a~~

In order to rescind, a challenger must request the district court to order the recission and to include in the order specific findings of fact that the request for recission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of recission to the State Registrar of Vital Statistics. Upon receipt of an order of recission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support ~~said~~ the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. ~~Such~~ The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment

shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether ~~he~~ the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. ~~Such~~ The mother shall not be excused from making ~~such~~ the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 4.8. G.S. 110-133 reads as rewritten:

"**§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number."

Section 4.9. G.S. 49-12.1(c) reads as rewritten:

"(c) The parties may ~~waive a jury trial and~~ enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child."

Section 4.10. G.S. 49-14 is amended by adding the following new subsections to read:

"(f) Parties to an action to establish paternity are not entitled to a trial by jury on the issue of paternity.

(g) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of

paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(h) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child."

Section 4.11. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.**

(a) In a IV-D case, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation."

Section 4.12. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the ~~child.~~ child, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. ~~The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence.~~ The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

**PART 5. SUSPENSION/REVOCATION OF LICENSES FOR FAILURE TO COMPLY WITH SUBPOENA ISSUED PURSUANT TO CHILD SUPPORT OR PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 5. The catch line to G.S. 110-142 reads as rewritten:

"**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child ~~support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**"

Section 5.1. G.S. 110-142.1 reads as rewritten:

"**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support ~~or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child ~~support.~~ support or with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) ~~The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in,~~

~~a court of this State, and who are not in compliance with that order.~~ The designated representative shall submit a certified list with the names, social security numbers, and last known address of ~~these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office.~~ individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the ~~obligors~~ individuals listed are subject to an order for the payment of support and ~~that these persons~~ are not in compliance with the ~~order.~~ order, or are not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of ~~its obligors,~~ the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of ~~obligors~~ individuals from the Department of Human Resources, each board shall determine whether its applicant or licensee is an ~~obligor~~ individual on the list. If the applicant or licensee is ~~an obligor~~ on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the ~~obligor's~~ individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the ~~obligor's~~ individual's license 20 days from the date of the notice to the ~~obligor~~ individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the ~~obligor.~~ individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the

license. The notice shall inform the ~~obligor~~ individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the ~~obligor.~~ individual. The Department of Human Resources shall also develop a form that the ~~obligor~~ individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an ~~obligor~~ individual to have the underlying arrearage and any relevant defenses investigated, to provide an ~~obligor~~ individual information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an ~~obligor~~ individual assistance in the establishment of a payment schedule on arrears.

(h) If the ~~obligor~~ individual wishes to challenge the submission of the ~~obligor's~~ individual's name on the certified ~~list~~ list, or if the individual wishes to negotiate a payment schedule, the ~~obligor~~ individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the ~~obligor's~~ request for review notify the appropriate board of the ~~obligor's~~ request for review and direct the board to stay any action revoking or suspending the ~~obligor's~~ individual's ~~license~~ license until further notice from the designated representative. The designated representative shall review the ~~obligor's~~ case and inform the ~~obligor~~ individual in writing of the representative's findings and decision upon completion of the review. ~~The~~ If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this ~~section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement.~~ section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the ~~obligor~~ individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the ~~obligor's~~ individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the ~~obligor's~~ individual's license.

(i) The designated representative shall notify the ~~obligor~~ individual in writing that the ~~obligor~~ individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the ~~obligor~~ individual shall file the motion and inform the ~~obligor~~ individual that the ~~obligor's~~ individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this~~ the individual is in compliance with this section. The notice shall also inform the ~~obligor~~ individual that

the ~~obligor~~ individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the ~~obligor~~ individual upon the designated representative who submitted the ~~obligor's~~ individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the ~~obligor~~ individual is no longer in arrears or that the ~~obligor's~~ individual's license should be reinstated to allow the ~~obligor~~ individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this section. ~~In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.~~ If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the ~~obligor~~ individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement ~~as provided in subsection (h) of this section,~~ the designated representative shall mail to the ~~obligor~~ individual and the appropriate board a notice certifying that the ~~obligor~~ individual is in compliance. The receipt of certification shall serve to notify the ~~obligor~~ individual and the board that, for the purposes of this section, the ~~obligor~~ individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond

only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable."

Section 5.2. G.S. 110-142.2 reads as rewritten:

**"§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an ~~obligor~~ individual is at least 90 days in arrears in making child support payments, or is not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

(1) Revoking the ~~obligor's~~ individual's regular or commercial license to operate a motor vehicle;

(2) Revoking the ~~obligor's~~ individual's hunting, fishing, or trapping licenses;

(3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the ~~obligor's~~ individual's motor vehicle.

(b) Upon finding that the ~~obligor~~ individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the ~~obligor~~ individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the ~~obligor's~~ individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the ~~obligor's~~ individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An ~~obligor~~ individual whose license has been revoked for

reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An ~~obligor~~ individual may file a request with the child support enforcement agency for certification that the ~~obligor~~ individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the ~~obligor~~ individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the ~~obligor~~ individual for a request for certification. If the child support enforcement agency finds that the ~~obligor~~ individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual.

(e) If licensing privileges are revoked under this section, the ~~obligor~~ individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over ~~time.~~ time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer ~~delinquent~~ delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the ~~obligor's~~ individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the ~~obligor's~~ individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the ~~obligor~~ individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The

Division shall not remove any restriction of the ~~obligor's~~ individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process."

Section 5.3. G.S. 50-13.12 reads as rewritten:

"**§ 50-13.12. Forfeiture of Licensing Privileges for Failure to Pay Child ~~Support.~~ Support or for Failure to Comply with Subpoena Issued Pursuant to Child Support or Paternity Establishment Proceedings.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of state government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.

(4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.

(5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, or upon a finding that a person has willfully failed to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, and upon findings as to any specific licensing privileges held by the ~~obligor,~~ obligor or held by the person subject to the subpoena, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in ~~full.~~ full, or, as applicable, until the person subject to the subpoena has complied with the subpoena. The court may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. The court may stay the revocation pertaining to the person subject to the subpoena upon a finding that the person has complied with or is no longer subject to the subpoena. Upon an order revoking such privileges of an obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof

of certification by the clerk that the obligor is no longer delinquent in child support payments. Upon an order revoking such privileges of a person subject to the subpoena that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the person has failed to comply with the subpoena issued pursuant to a child support or paternity establishment proceeding and that the person's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the person is in compliance with or no longer subject to the subpoena.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with a subpoena may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the subpoena. The clerk shall provide a form to be used ~~by the obligor~~ for a request for certification. If the clerk finds that the obligor has met the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with a subpoena has complied with or is no longer subject to the subpoena, then the clerk shall certify that the person has met the requirements of or is no longer subject to the subpoena and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. If the licensing privileges of a person other than the obligor are revoked under this section for failure to comply with a subpoena, the person may petition the district court for reinstatement of the privileges. The court may order the privileges reinstated if the person has complied with or is no longer subject to the subpoena that was the basis for revocation. Upon reinstatement under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with a subpoena, the clerk of superior court shall certify that the person has complied with or is no longer subject to the subpoena. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) ~~The obligor~~ An obligor or other person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor or other person applies for reinstatement of licensing privileges. Upon request of the ~~obligor,~~ obligor or other person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that ~~the obligor's~~ an obligor's or other person's licensing privileges are ~~revoked,~~ revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to an obligor shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with a subpoena shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

Section 5.4. G.S. 93B-13 reads as rewritten:

"**§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child ~~support.~~ support or for failure to comply with subpoena.**

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Human Resources that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under

its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

**PART 6. INCOME WITHHOLDING.**

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~~ 7 business days of the date the obligor is paid, send to the clerk of superior court or State collection and disbursement unit, as 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~~ agency, the clerk of superior ~~court;~~ court, or the State collection and disbursement unit;

(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 or the State collection and disbursement unit 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."

**PART 6A. EXPEDITED PROCEDURES FOR INCOME WITHHOLDING.**

Section 6.1. G.S. 110-136.3(b) reads as rewritten:

"(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the ~~earliest of:~~

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

~~b.~~ ~~The~~ date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

b. The date on which the obligor requests withholding; or

c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if arrearages occur."

Section 6.2. 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 or on the obligor's request for withholding or on the obligee's request

for ~~withholding;~~ withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue support, 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;

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."

**PART 7. ESTABLISHMENT OF A LIEN ON REAL AND PERSONAL PROPERTY OF PERSON OWING PAST-DUE CHILD SUPPORT.**

Section 7. Chapter 44 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15.

"Liens for Overdue Child Support.

**"§ 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.**

(a) Definitions. As used in this Article, the terms 'designated representative', 'obligee', and 'obligor' have the meanings given them in G.S. 110-129.

(b) Lien Created. There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a court-ordered child support obligation equals three months of payments or three thousand dollars ($3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. A verified statement of child support delinquency shall contain the following information:

(1) The caption and file docket number of the case in which child support was ordered;

(2) The date of the order of support;

(3) The amount of the child support obligation established by the order; and

(4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

(1) IV-D Cases. In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.

(2) Non-IV-D Cases. In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien on the judgment docket only by order of the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and

with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes.

"**§ 44-87. Discharge of lien; penalty for failure to discharge.**

(a) Liens created by this Article may be discharged as follows:

(1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;

(2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or

(3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee."

Section 7.1. G.S. 50-13.4(f)(8) reads as rewritten:

"(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a ~~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."

**PART 8. DEPARTMENT OF HUMAN RESOURCES TO DEVELOP AUTOMATED DATA PROCESSING AND INFORMATION SYSTEM, AND CENTRALIZED COLLECTION AND DISBURSEMENT SYSTEM FOR THE ENHANCEMENT OF CHILD SUPPORT COLLECTION AND DISBURSEMENT.**

Section 8. (a) Automated System. The Department of Human Resources shall develop a single statewide automated data processing and information retrieval system to enhance enforcement of child support obligations. The system shall have the capability to perform the following tasks:

(1) Program management, including the controlling and accounting for use of federal, State, and local funds in carrying out the State child support enforcement program, and maintaining the data necessary to meet federal reporting requirements on a timely basis;

(2) Maintenance of requisite data on State performance with respect to paternity establishment and child support enforcement, including systems controls to ensure completeness and reliability of and ready access to this data;

(3) Establishment of safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the system. Safeguards shall include policies restricting, controlling, and monitoring access to the system and database;

(4) Maintenance of the State's automated case tracking system (ACTS) in accordance with federal requirements;

(5) Information retrieval, comparisons, and disclosure, including the sharing and comparison of information from other databases and information comparison services. Comparison services shall include information retrieval and sharing with such databases as the Federal Case Registry of Child Support Orders, the Federal Parent Locator Service, temporary family assistance and Medicaid agencies, and other agencies of this State and agencies of other states and interstate information networks;

(6) Collection and distribution of support payments through the State Collection Disbursement Unit as required by federal law; and

(7) Implement expedited administrative procedures for the establishment of paternity and the enforcement of child support orders.

In addition, the system shall include procedures to ensure that all personnel who have access to confidential program data are trained in and informed of applicable requirements and penalties. The Department shall impose administrative penalties authorized by State law for unauthorized access to or disclosure or use of confidential data in the system.

(b) Progress Reports on Development. The Department shall provide periodic written progress reports to the Cochairs of the House and Senate Appropriations subcommittees on Human Resources, and to the Fiscal Research Division, not later than October 1, 1997, March 1, 1998, and October 1, 1998. Information contained in the report shall include, but not be limited to:

(1) Federal requirements for the automated system and collection and disbursements units;

(2) Status of development of the automated system and collection and disbursement unit as of the date of the progress report, and whether the development plan is on schedule, behind schedule, or ahead of schedule, and the reasons therefor;

(3) Projected costs to develop and operate the automated system; and projected savings, if any, from full implementation of the system;
(4) Projected costs to develop and operate the collection and disbursement unit, including recommendations on whether the Department should operate the unit or whether it should be operated by an outside contractor;
(5) The amount of State funds that must be appropriated for the 1998-99 fiscal year to develop and implement the collection and disbursement unit; and
(6) Other information requested by the Cochairs or that the Department considers relevant and useful.

Section 8.1. Effective October 1, 1999, G.S. 110-139 is amended by adding the following new subsection to read:

"(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for:

(1) All IV-D cases, and
(2) All non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding.

The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit."

Section 8.2. G.S. 110-139.1(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the ~~The~~ parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any ~~absent~~ parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect ~~to~~ to:

(1) ~~the~~ The unlawful taking or restraint of a ~~child~~ child;
(2) ~~or making~~ Making or enforcing a child custody ~~determination.~~ determination, including visitation orders;
(3) Establishing paternity; or
(4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent."

**PART 9. FINANCIAL INSTITUTIONS/DATA MATCH SYSTEM.**

Section 9. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-139.2. Data match system; agreements with financial institutions.**

(a) The Department of Human Resources and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State."

Section 9.1. G.S. 110-139(d) reads as rewritten:

"(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility ~~company~~ company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility ~~company~~ company, cable television company, or financial institution. A utility ~~company~~ company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure."

**PART 10. AMEND UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).**

Section 10. G.S. 52C-1-101 reads as rewritten:

"**§ 52C-1-101. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Child' means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) 'Child support order' means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) 'Duty of support' means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) 'Home state' means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) 'Income' includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.

(6) 'Income-withholding order' means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.

(7) 'Initiating state' means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support ~~Act is filed for forwarding to a responding state.~~ Act.

(8) 'Initiating tribunal' means the authorized tribunal in an initiating state.

(9) 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) 'Issuing tribunal' means the tribunal that issues a support order or renders a judgment determining parentage.

(11) 'Law' includes decisional and statutory law and rules and regulations having the force of law.

(12) 'Obligee' means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or

which has independent claims based on financial assistance provided to an individual obligee; or

c. An individual seeking a judgment determining parentage of the individual's child.

(13) 'Obligor' means an individual, or the estate of a decedent:

a. Who owes or is alleged to owe a duty of support;

b. Who is alleged but has not been adjudicated to be a parent of a child; or

c. Who is liable under a support order.

(14) 'Register' means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) 'Registering tribunal' means a tribunal in which a support order is registered.

(16) 'Responding state' means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) 'Responding tribunal' means the authorized tribunal in a responding state.

(18) 'Spousal-support order' means a support order for a spouse or former spouse of the obligor.

(19) 'State' means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term ~~'state'~~ includes:

a. An Indian tribe; and ~~includes~~

b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this ~~Chapter.~~ Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) 'Support enforcement agency' means a public official or agency authorized to seek:

a. Enforcement of support orders or duties of ~~support~~ support;

b. ~~to seek establishment~~ Establishment or modification of child ~~support,~~ support;

c. ~~to seek determination~~ Determination of ~~paternity,~~ parentage; or

d. ~~to~~ To locate obligors or their assets.

(21) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a

child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) 'Tribunal' means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division."

Section 10.1. G.S. 52C-2-203 reads as rewritten:

"**§ 52C-2-203. Initiating and responding tribunal of ~~this State.~~ state.**

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Section 10.2. G.S. 52C-2-205 reads as rewritten:

"**§ 52C-2-205. Continuing, exclusive jurisdiction.**

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until ~~each individual party has~~ all of the parties who are individuals have filed written ~~consent~~ consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 10.3. (a) The title of Part 3 of Article 2 of Chapter 52C of the General Statutes reads as rewritten:

"Part 3. Reconciliation ~~With Orders of Other States.~~ of Multiple Orders."

(b) G.S. 52C-2-207 reads as rewritten:

"**§ 52C-2-207. Recognition of controlling child support ~~orders.~~ order.**

~~(a) If a proceeding is brought under this Chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~

~~(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

~~(2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal must be recognized.~~

~~(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~

~~(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State may issue a child support order, which must be recognized.~~

~~(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.~~

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under G.S. 52C-2-205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 10.4. G.S. 52C-3-304 reads as rewritten:

"**§ 52C-3-304. Duties of initiating tribunal.**

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this State may issue a certificate or other

document and make findings required by the law of the responding state. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 10.5. G.S. 52C-3-305 reads as rewritten:

**"§ 52C-3-305. Duties and powers of responding tribunal.**

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrears, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and State computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorneys' fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any."

Section 10.6. G.S. 52C-3-306 reads as rewritten:

**"§ 52C-3-306. Inappropriate tribunal.**

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

Section 10.7. G.S. 52C-3-307 reads as rewritten:

"**§ 52C-3-307. Duties of support enforcement agency.**

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 10.8. Article 5 of Chapter 52C of the General Statutes reads as rewritten:

"ARTICLE 5.

"~~Direct~~ Enforcement of Order of Another State Without Registration.

"**§ 52C-5-501. ~~Recognition~~ Employer's receipt of income-withholding order of another state.**

~~(a)~~ An income-withholding order issued in another state may be sent ~~by first-class mail~~ to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order.

~~(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

~~(1) The person or agency designated to receive payments in the income-withholding order; or~~

~~(2) If no person or agency is designated, the obligee.~~

"§ 52C-5-502. ~~Administrative enforcement of orders.~~

~~(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.~~

~~(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.~~

**Employer's compliance with income-withholding order of another state.**

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

"**§ 52C-5-503. Compliance with multiple income-withholding orders.**

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

"**§ 52C-5-504. Immunity from civil liability.**

An employer who complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

"**§ 52C-5-505. Penalties for noncompliance.**

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

"**§ 52C-5-506. Contest by obligor.**

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this State in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order; and

(3) The person or agency designated to receive payments in the income-withholding order if no person or agency is designated, to the obligee.

"**§ 52C-5-507. Administrative enforcement of orders.**

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter."

Section 10.9. G.S. 52C-6-601 reads as rewritten:

**"§ 52C-6-601. Registration ~~or [of]~~ of order for enforcement.**

A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement."

Section 10.10. G.S. 52C-6-605 reads as rewritten:

**"§ 52C-6-605. Notice of registration of order.**

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the~~ notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable."

Section 10.11. G.S. 52C-6-606 reads as rewritten:

**"§ 52C-6-606. Procedure to contest validity or enforcement of registered order.**

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after ~~the date of mailing or personal service of~~ notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing."

Section 10.12. G.S. 52C-6-611 reads as rewritten:

**"§ 52C-6-611. Modification of child support order of another state.**

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only ~~if,~~ if G.S. 52C-6-613 does not apply and after notice and ~~hearing,~~ hearing it finds that:

(1) The following requirements are met:

a. The child, the individual obligee, and the obligor do not reside in the issuing state;

b. A petitioner who is a nonresident of this State seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) ~~An individual party or the child~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the ~~individual~~ parties who are individuals have filed a written consent in the issuing tribunal ~~providing that~~ for a tribunal of this State ~~may~~ to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

~~(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered.~~"

Section 10.13. Article 6 of Chapter 52C of the General Statutes is amended by adding the following new sections to read:

"**§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this State.**

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

**"§ 52C-6-614. Notice to issuing tribunal of modification.**

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction."

Section 10.14. The Reviser of Statutes shall cause to be printed separate from this Part all relevant portions of the official comments to the Uniform Interstate Family Support Act, as amended, as the Reviser deems appropriate.

**PART 10A. FRAUDULENT CONVEYANCES TO AVOID CHILD SUPPORT.**

Section 10.15. Article 3 of Chapter 39 of the General Statutes is amended by adding the following new section to read:

**"§ 39-15.1. Fraudulent conveyances to avoid child support.**

(a) As used in this section, the terms 'obligor' and 'obligee' shall have the meanings given those terms in G.S. 110-129.

(b) In all child support cases, the conveyance of property by an obligor who is delinquent in the payment of child support may be voided by an obligee upon a showing of fraudulent intent. The factors which may be considered to show fraudulent intent are as follows:

(1) The conveyance or obligation was to an insider.
(2) The obligor retained possession or control of the property after the conveyance.
(3) The conveyance was concealed or not disclosed.
(4) Before the conveyance was made or the obligation was incurred, the obligor had been sued or threatened with suit.
(5) The conveyance was of substantially all the obligor's assets.
(6) The obligor removed or concealed assets.
(7) The value of the consideration received by the obligor was not reasonably equivalent to the value of the asset conveyed or the amount of the obligation incurred.
(8) The obligor was insolvent or became insolvent shortly after the conveyance was made or the obligation incurred.
(9) The conveyance occurred shortly before or shortly after a substantial debt was incurred.
(10) The obligor conveyed the essential assets of a business to a lienor who conveyed the assets to an insider of the obligor.

Proof of two or more of the factors listed in this subsection creates a rebuttable presumption of fraud. Unless otherwise provided under this Article, if the court finds by clear and convincing evidence that the conveyance was fraudulent, then the conveyance is void."

**PART 11. MISCELLANEOUS AND EFFECTIVE DATE**

Section 11. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 11.1. If the 1997 General Assembly enacts House Bill 407, the Uniform Fraudulent Transfer Act, then Section 10.15 of this act is repealed effective on the date that the Uniform Fraudulent Transfer Act becomes law.

Section 11.2. Except as otherwise provided in this act, this act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 301
Committee Substitute Favorable 4/28/97
Committee Substitute #2 Favorable 5/15/97
Proposed Committee Substitute H301-PCS2378

Short Title: Child Support/Fed. Req. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

The General Assembly of North Carolina enacts:

**PART 1. STATE DIRECTORY OF NEW HIRES.**

Section 1. Effective October 1, 1997, Article 1 of Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.**

(a) Directory Established. -- There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. -- Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire,

or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. -- Each report required by this section shall contain the name, address, and social security number of the employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. -- Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars ($25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars ($500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. -- Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. -- Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. -- The Employment Security Commission may access information entered into the Directory from employer reports for the purpose of administering employment security programs. The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.

(h) Department May Contract for Services. -- The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. -- Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. -- As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Business day' means a day on which State offices are open for business.

(2) 'Department' means the Department of Human Resources.

(3) 'Employee' means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term 'employee' does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(4) 'Employer' has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term 'labor organization' shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer."

**PART 2. EXPANDED AUTHORITY OF THE DEPARTMENT TO ENFORCE CHILD SUPPORT ORDERS AND TO ESTABLISH PATERNITY.**

Section 2. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-129.1. Additional powers and duties of the Department.**

(a) In addition to other powers and duties conferred upon the Department of Human Resources, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

(1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon

the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.

(2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency of this State for law enforcement purposes.

(3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.

(4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.

(5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.

(6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.

(7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).

(8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:

a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;

b. Implement income withholding in accordance with this Chapter;

c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;

d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.

(b) As used in this section, the term 'Secretary' means the Secretary of Human Resources, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5)."

Section 2.1. (a) G.S. 50-13.4(d) reads as rewritten:

"(d) ~~Payments~~ In non-IV-D cases, 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~~ the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the court or other proper State agency for the benefit of the child."

(b) This section applies to orders entered or modified on and after October 1, 1997.

Section 2.2. G.S. 50-13.4 is amended by adding the following new subsection to read:

"(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer."

**PART 2A. NOTICE/DUE PROCESS REQUIREMENTS.**

Section 2.3. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-131.1. Notice; due process requirements met.**

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint."

**PART 3. AUTHORIZE JUDGES TO IMPOSE WORK REQUIREMENTS ON OBLIGORS WHO ARE IN ARREARS IN CHILD SUPPORT, AND TO REQUIRE PARENTS TO PROVIDE MEDICAL SUPPORT.**

Section 3. G.S. 110-136.3 is amended by adding the following new subsection to read:

"(a1) Payment Plan/Work Requirement for Past-Due Support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under Section 407(d) of P.L. 104-193, as the court deems appropriate."

Section 3.1. G.S. 50-13.11 reads as rewritten:

"**§ 50-13.11. Orders and agreements regarding medical support and health insurance coverage for minor children.**

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. ~~An order or agreement for medical support may require one or both parties to maintain health insurance, dental insurance, or both, or to pay the medical, hospital, or dental expenses.~~ An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental, or other health care related expenses.

(a1) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance.

(b) The party ordered or under agreement to provide ~~medical~~ health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide ~~medical,~~ health, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide ~~medical,~~ health, hospital, and dental insurance.

(d) When a court order or agreement for ~~medical~~ health insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide ~~medical~~ health insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any ~~medical,~~ health, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.

(f) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan."

Section 3.2. G.S. 108A-69(b) reads as rewritten:

"(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer doing business in this State, the employer:

(1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.

(3) May not disenroll or eliminate coverage of the child unless:

a. The employer is provided satisfactory written evidence that:

1. The court or administrative order is no longer in effect; or

2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or

b. The employer has eliminated family health benefit plan coverage for all of its employees.

(4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

**PART 3A. CONFORM STATE TAX INTERCEPT LAW TO FEDERAL REQUIREMENTS.**

Section 3.3. G.S. 105A-2(1)d. reads as rewritten:

"d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support ~~arrearages~~ owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;".

**PART 4. REQUIREMENT TO PROVIDE SOCIAL SECURITY NUMBERS ON CERTAIN DOCUMENTS.**

Section 4. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. The applicant's social security number shall not be printed on the license and may be released only to the Department of Human Resources, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.
(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. ~~405(c)(2)(C)(v),~~ 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under this subsection only for the purpose of administering the

drivers license laws or to assist the State Child Support Enforcement Program in establishing paternity or establishing or enforcing child support and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. ~~405(e)(2)(C)(vii).~~ 408, and amendments thereto."

Section 4.1. G.S. 49-7 reads as rewritten:

"**§ 49-7. Issues and orders.**

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support an illegitimate child."

Section 4.2. G.S. 49-14(a) reads as rewritten:

"(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~~ The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

Section 4.3. G.S. 50-8 reads as rewritten:

"**§ 50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.**

In all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint, and that the facts set forth therein as grounds for divorce, except in actions for divorce from bed and board, have existed to his or her knowledge for at least six months prior to the filing of the complaint: Provided, however, that if the cause for divorce is one-year separation, then it shall not be necessary to allege in the complaint that the grounds for divorce have existed for at least six months prior to the filing of the complaint; it being the purpose of this proviso to permit a divorce after such separation of one year without awaiting an additional six months for filing the complaint: Provided, further, that if the complainant is a nonresident of the State action shall be brought in the county of the defendant's residence, and summons served upon the defendant personally or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this section, any suit or action for divorce heretofore instituted by a nonresident of this State in which the defendant was personally served with summons or in which the defendant personally accepted service of the summons and the case was tried and final judgment entered in a court of this State in a county other than the county of the defendant's residence, is hereby validated and declared to be legal and proper, the same as if the suit or action for divorce had been brought in the county of the defendant's residence.

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no ~~such~~ minor children of the marriage, the complaint shall so state. In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff and, if known, the social security number of the defendant.

In all prior suits and actions for divorce heretofore instituted and tried in the courts of this State where the averments of fact required to be contained in the affidavit heretofore required by this section are or have been alleged and set forth in the complaint in said suits or actions and said complaints have been duly verified as required by Rule 11 of the Rules of Civil Procedure, said allegations so contained in said complaints shall be deemed to be, and are hereby made, a substantial compliance as to the allegations heretofore required by this section to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce.

In all suits and actions for divorce heretofore instituted and tried in this State on and subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the verification to the complaint in said suits or actions are not in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to verification of complaint or the allegations, statements or averments in the verification contain the language that the facts set forth in the complaint are true 'to the best of affiant's knowledge and belief' instead of the language 'that the same is true to his (or her) own knowledge' or similar variation in language, said allegations, statements and averments in said verifications as contained in or attached to said complaint shall be deemed to be, and are hereby made, a substantial compliance as to the allegations, averments or statements required by this section to be set forth in any such verifications; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce. The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties."

Section 4.4. G.S. 50-13.4 is amended by adding the following new subsections to read:

"(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Human Resources, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

Section 4.5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 4.6. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"**§ 93B-14. Information on applicants for licensure.**

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only to the State Child Support Enforcement Program of the Department of Human Resources upon its request and for the purpose of enforcing a child support order."

**PART 4A. PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 4.7. G.S. 110-132(a) reads as rewritten:

"**§ 110-132. Acknowledgment of paternity and agreement to support.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of paternity, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

~~and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a~~

In order to rescind, a challenger must request the district court to order the recission and to include in the order specific findings of fact that the request for recission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders recission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of recission to the State Registrar of Vital Statistics. Upon receipt of an order of recission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support ~~said~~ the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of

prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. ~~Such~~ The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether ~~he~~ the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. ~~Such~~ The mother shall not be excused from making ~~such~~ the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 4.8. G.S. 110-133 reads as rewritten:

"**§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number."

Section 4.9. G.S. 49-12.1(c) reads as rewritten:

"(c) The parties may ~~waive a jury trial and~~ enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child."

Section 4.10. G.S. 49-14 is amended by adding the following new subsections to read:

"(f) Parties to an action to establish paternity are not entitled to a trial by jury on the issue of paternity.

(g) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(h) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child."

Section 4.11. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.**

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation."

Section 4.12. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;
(2) A sworn statement by the father declaring that he believes he is the natural father of the child;
(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the ~~child.~~ child, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. ~~The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence.~~ The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

**PART 5. SUSPENSION/REVOCATION OF LICENSES FOR FAILURE TO COMPLY WITH SUBPOENA ISSUED PURSUANT TO CHILD SUPPORT OR PATERNITY ESTABLISHMENT PROCEEDINGS.**

Section 5. The catch line to G.S. 110-142 reads as rewritten:

"**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child ~~support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**"

Section 5.1. G.S. 110-142.1 reads as rewritten:

"**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support ~~or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.~~ or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child ~~support.~~ support or has been found by the court not to be in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) ~~The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in, a court of this State, and who are not in compliance with that order.~~ The designated representative shall submit a certified list with the names, social security numbers, and last known address of ~~these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office.~~ individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the ~~obligors~~ individuals listed are subject to an order for the payment of support and ~~that these persons~~ are not in compliance with the ~~order.~~ order, or have been found by the court to be not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of ~~its obligors,~~ the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of ~~obligors~~ individuals from the Department of Human Resources, each board shall determine whether its applicant or licensee is an ~~obligor~~ individual on the list. If the applicant or licensee is ~~an obligor~~ on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the ~~obligor's~~ individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the ~~obligor's~~ individual's license 20 days from the date of the notice to the ~~obligor~~ individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the ~~obligor.~~ individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the ~~obligor~~ individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the ~~obligor.~~ individual. The Department of Human Resources shall also develop a form that the ~~obligor~~ individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an ~~obligor~~ individual to have the underlying arrearage and any relevant defenses investigated, to provide an ~~obligor~~ individual information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an ~~obligor~~ individual assistance in the establishment of a payment schedule on arrears.

(h) If the ~~obligor~~ individual wishes to challenge the submission of the ~~obligor's~~ individual's name on the certified ~~list~~ list, or if the individual wishes to negotiate a payment schedule, the ~~obligor~~ individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the ~~obligor's~~ request for review notify the appropriate board of the ~~obligor's~~ request for review and direct the board to stay any action revoking or suspending the ~~obligor's~~ individual's ~~license~~ license until further notice from the designated representative. The designated representative shall review the ~~obligor's~~ case and inform the ~~obligor~~ individual in writing of the representative's findings and decision upon completion of the review. ~~The~~ If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this ~~section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement.~~ section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the ~~obligor~~ individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the ~~obligor's~~ individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the ~~obligor's~~ individual's license.

(i) The designated representative shall notify the ~~obligor~~ individual in writing that the ~~obligor~~ individual may, by filing a motion, request any or all of the following:

(1) Judicial review of the designated representative's decision.

(2) A judicial determination of compliance.

(3) A modification of the support order.

The notice shall also contain the name and address of the court in which the ~~obligor~~ individual shall file the motion and inform the ~~obligor~~ individual that the ~~obligor's~~ individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the ~~obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this~~ the individual is in compliance with this section. The notice shall also inform the ~~obligor~~ individual that the ~~obligor~~ individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the ~~obligor~~ individual upon the designated representative who submitted the ~~obligor's~~ individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the ~~obligor~~ individual is no longer in arrears or that the ~~obligor's~~ individual's license should be reinstated to allow the ~~obligor~~ individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the ~~obligor's~~ individual's compliance with this section. ~~In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.~~ If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the ~~obligor~~ individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement ~~as provided in subsection (h) of this section,~~ the designated representative shall mail to the ~~obligor~~ individual and the appropriate board a notice certifying that the ~~obligor~~ individual is in compliance. The receipt of certification shall serve to notify the ~~obligor~~ individual and the board that, for the purposes of this section, the ~~obligor~~ individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable."

Section 5.2. G.S. 110-142.2 reads as rewritten:

**"§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an ~~obligor~~ individual is at least 90 days in arrears in making child support payments, or has been found by the court to be not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

(1) Revoking the ~~obligor's~~ individual's regular or commercial license to operate a motor vehicle;

(2) Revoking the ~~obligor's~~ individual's hunting, fishing, or trapping licenses;

(3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the ~~obligor's~~ individual's motor vehicle.

(b) Upon finding that the ~~obligor~~ individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the ~~obligor~~ individual shall surrender any licenses revoked by the court's order to the child support enforcement

agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the ~~obligor's~~ individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the ~~obligor's~~ individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An ~~obligor~~ individual whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An ~~obligor~~ individual may file a request with the child support enforcement agency for certification that the ~~obligor~~ individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the ~~obligor~~ individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the ~~obligor~~ individual for a request for certification. If the child support enforcement agency finds that the ~~obligor~~ individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual.

(e) If licensing privileges are revoked under this section, the ~~obligor~~ individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over ~~time.~~ time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer ~~delinquent~~ delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor.~~ individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the ~~obligor's~~ individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the ~~obligor's~~ individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the ~~obligor~~ individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the ~~obligor's~~ individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process."

Section 5.3. G.S. 50-13.12 reads as rewritten:

"**§ 50-13.12. Forfeiture of ~~Licensing Privileges for Failure to Pay Child Support.~~ licensing privileges for failure to pay child support or for failure to comply with subpoena issued pursuant to child support or paternity establishment proceedings.**

(a) As used in this section, the term:

(1) 'Licensing board' means a department, division, agency, officer, board, or other unit of state government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.

(2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.

(3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.

(4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.

(5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, or upon a finding that a person has willfully failed to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, and upon findings as to any specific licensing privileges held by the ~~obligor,~~ obligor or held by the person subject to the subpoena, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in ~~full.~~ full, or, as applicable, until the person subject to the subpoena has complied with the subpoena. The court

may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. The court may stay the revocation pertaining to the person subject to the subpoena upon a finding that the person has complied with or is no longer subject to the subpoena. Upon an order revoking such privileges of an obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the obligor is no longer delinquent in child support payments. Upon an order revoking such privileges of a person subject to the subpoena that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the person has failed to comply with the subpoena issued pursuant to a child support or paternity establishment proceeding and that the person's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the person is in compliance with or no longer subject to the subpoena.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with a subpoena may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the subpoena. The clerk shall provide a form to be used ~~by the obligor~~ for a request for certification. If the clerk finds that the obligor has met the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with a subpoena has complied with or is no longer subject to the subpoena, then the clerk shall certify that the person has met the requirements of or is no longer subject to the subpoena and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. If the licensing privileges of a person other than the obligor are revoked under this section for failure to comply with a subpoena, the person may petition the district court for reinstatement of the privileges. The court may order the privileges reinstated if the person has complied with or is no longer subject to the subpoena that was the basis for revocation. Upon reinstatement

under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with a subpoena, the clerk of superior court shall certify that the person has complied with or is no longer subject to the subpoena. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) ~~The obligor~~ An obligor or other person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor or other person applies for reinstatement of licensing privileges. Upon request of the ~~obligor,~~ obligor or other person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that ~~the obligor's~~ an obligor's or other person's licensing privileges are ~~revoked,~~ revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to an obligor shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with a subpoena shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

Section 5.4. G.S. 93B-13 reads as rewritten:

"**§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child ~~support.~~ support or for failure to comply with subpoena.**

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Human Resources that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as

provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support ~~payments.~~ payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

**PART 6. INCOME WITHHOLDING.**

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~~ 7 business days of the date the obligor is paid, send to the clerk of superior court or State collection and disbursement unit, as 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~~ agency, the clerk of superior ~~court;~~ court, or the State collection and disbursement unit;

(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 or the State collection and disbursement unit 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."

**PART 6A. EXPEDITED PROCEDURES FOR INCOME WITHHOLDING.**

Section 6.1. G.S. 110-136.3(b) reads as rewritten:

"(b) When obligor subject to withholding.

(1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the ~~earliest of:~~

~~a.~~ ~~The~~ date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one ~~month;~~ month, or

~~b.~~ ~~The~~ the date on which the obligor or obligee requests withholding.

(2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:

a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; ~~or~~

b. The date on which the obligor requests withholding; or

c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month."

Section 6.2. 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 or~~ month, on the obligor's request for ~~withholding or~~ withholding, on the obligee's request for ~~withholding;~~ withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);

b. The amount of overdue support, 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;

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."

**PART 7. ESTABLISHMENT OF A LIEN ON REAL AND PERSONAL PROPERTY OF PERSON OWING PAST-DUE CHILD SUPPORT.**

Section 7. Chapter 44 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15.

"Liens for Overdue Child Support.

**"§ 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.**

(a) Definitions. As used in this Article, the terms 'designated representative', 'obligee', and 'obligor' have the meanings given them in G.S. 110-129.

(b) Lien Created. There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a

court-ordered child support obligation equals three months of payments or three thousand dollars ($3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. A verified statement of child support delinquency shall contain the following information:

(1) The caption and file docket number of the case in which child support was ordered;

(2) The date of the order of support;

(3) The amount of the child support obligation established by the order; and

(4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

(1) IV-D Cases. In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.

(2) Non-IV-D Cases. In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien on the judgment docket only by order of

the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes.

"**§ 44-87. Discharge of lien; penalty for failure to discharge.**

(a) Liens created by this Article may be discharged as follows:

(1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;

(2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or

(3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee."

Section 7.1. G.S. 50-13.4(f)(8) reads as rewritten:

"(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a ~~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."

**PART 8. DEPARTMENT OF HUMAN RESOURCES TO DEVELOP AUTOMATED DATA PROCESSING AND INFORMATION SYSTEM, AND CENTRALIZED COLLECTION AND DISBURSEMENT SYSTEM FOR THE ENHANCEMENT OF CHILD SUPPORT COLLECTION AND DISBURSEMENT.**

Section 8. (a) Automated System. The Department of Human Resources shall develop a single statewide automated data processing and information retrieval system to enhance enforcement of child support obligations. The system shall have the capability to perform the following tasks:

(1) Program management, including the controlling and accounting for use of federal, State, and local funds in carrying out the State child support enforcement program, and maintaining the data necessary to meet federal reporting requirements on a timely basis;

(2) Maintenance of requisite data on State performance with respect to paternity establishment and child support enforcement, including systems controls to ensure completeness and reliability of and ready access to this data;

(3) Establishment of safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the system. Safeguards shall include policies restricting, controlling, and monitoring access to the system and database;

(4) Maintenance of the State's automated case tracking system (ACTS) in accordance with federal requirements;

(5) Information retrieval, comparisons, and disclosure, including the sharing and comparison of information from other databases and information comparison services. Comparison services shall include information retrieval and sharing with such databases as the Federal Case Registry of Child Support Orders, the Federal Parent Locator Service, temporary family assistance and Medicaid agencies, and other agencies of this State and agencies of other states and interstate information networks;

(6) Collection and distribution of support payments through the State Collection Disbursement Unit as required by federal law; and

(7) Implement expedited administrative procedures for the establishment of paternity and the enforcement of child support orders.

In addition, the system shall include procedures to ensure that all personnel who have access to confidential program data are trained in and informed of applicable requirements and penalties. The Department shall impose administrative penalties

authorized by State law for unauthorized access to or disclosure or use of confidential data in the system.

(b) Progress Reports on Development. The Department shall provide periodic written progress reports to the Cochairs of the House and Senate Appropriations subcommittees on Human Resources, and to the Fiscal Research Division, not later than October 1, 1997, March 1, 1998, and October 1, 1998. Information contained in the report shall include, but not be limited to:

(1) Federal requirements for the automated system and collection and disbursements units;

(2) Status of development of the automated system and collection and disbursement unit as of the date of the progress report, and whether the development plan is on schedule, behind schedule, or ahead of schedule, and the reasons therefor;

(3) Projected costs to develop and operate the automated system; and projected savings, if any, from full implementation of the system;

(4) Projected costs to develop and operate the collection and disbursement unit, including recommendations on whether the Department should operate the unit or whether it should be operated by an outside contractor;

(5) The amount of State funds that must be appropriated for the 1998-99 fiscal year to develop and implement the collection and disbursement unit; and

(6) Other information requested by the Cochairs or that the Department considers relevant and useful.

Section 8.1. Effective October 1, 1999, G.S. 110-139 is amended by adding the following new subsection to read:

"(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for:

(1) All IV-D cases, and

(2) All non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding.

The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit."

Section 8.2. G.S. 110-139.1(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the ~~The~~ parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any ~~absent~~ parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect ~~to~~ to:

(1) ~~the~~ The unlawful taking or restraint of a ~~child~~ child;

(2) ~~or making~~ Making or enforcing a child custody ~~determination.~~ determination, including visitation orders;
(3) Establishing paternity; or
(4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent."

**PART 9. FINANCIAL INSTITUTIONS/DATA MATCH SYSTEM.**

Section 9. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"**§ 110-139.2. Data match system; agreements with financial institutions.**

(a) The Department of Human Resources and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State."

Section 9.1. G.S. 110-139(d) reads as rewritten:

"(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility ~~company~~ company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide

the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility ~~company~~ company, cable television company, or financial institution. A utility ~~company~~ company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure."

**PART 10. AMEND UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).**

Section 10. G.S. 52C-1-101 reads as rewritten:

"**§ 52C-1-101. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Child' means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) 'Child support order' means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) 'Duty of support' means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) 'Home state' means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) 'Income' includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.

(6) 'Income-withholding order' means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.

(7) 'Initiating state' means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support ~~Act is filed for forwarding to a responding state.~~ Act.

(8) 'Initiating tribunal' means the authorized tribunal in an initiating state.

(9) 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) 'Issuing tribunal' means the tribunal that issues a support order or renders a judgment determining parentage.

(11) 'Law' includes decisional and statutory law and rules and regulations having the force of law.

(12) 'Obligee' means:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

c. An individual seeking a judgment determining parentage of the individual's child.

(13) 'Obligor' means an individual, or the estate of a decedent:

a. Who owes or is alleged to owe a duty of support;

b. Who is alleged but has not been adjudicated to be a parent of a child; or

c. Who is liable under a support order.

(14) 'Register' means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) 'Registering tribunal' means a tribunal in which a support order is registered.

(16) 'Responding state' means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) 'Responding tribunal' means the authorized tribunal in a responding state.

(18) 'Spousal-support order' means a support order for a spouse or former spouse of the obligor.

(19) 'State' means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term ~~'state'~~ includes:

a. An Indian tribe; and ~~includes~~

b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders

which are substantially similar to the procedures under this ~~Chapter.~~ Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) 'Support enforcement agency' means a public official or agency authorized to seek:

a. Enforcement of support orders or duties of ~~support~~ support;

b. ~~to seek establishment~~ Establishment or modification of child ~~support,~~ support;

c. ~~to seek determination~~ Determination of ~~paternity,~~ parentage; or

d. ~~to~~ To locate obligors or their assets.

(21) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) 'Tribunal' means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division."

Section 10.1. G.S. 52C-2-203 reads as rewritten:

"**§ 52C-2-203. Initiating and responding tribunal of ~~this State.~~ state.**

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Section 10.2. G.S. 52C-2-205 reads as rewritten:

"**§ 52C-2-205. Continuing, exclusive jurisdiction.**

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until ~~each individual party has~~ all of the parties who are individuals have filed written ~~consent~~ consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 10.3. (a) The title of Part 3 of Article 2 of Chapter 52C of the General Statutes reads as rewritten:

"Part 3. Reconciliation ~~With Orders of Other States.~~ of Multiple Orders."

(b) G.S. 52C-2-207 reads as rewritten:

"**§ 52C-2-207. Recognition of controlling child support ~~orders.~~ order.**

~~(a) If a proceeding is brought under this Chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~

~~(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

~~(2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal must be recognized.~~

~~(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~

~~(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have~~

~~continuing, exclusive jurisdiction under this Chapter, the tribunal of this State may issue a child support order, which must be recognized.~~

~~(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.~~

(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under G.S. 52C-2-205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions

by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 10.4. G.S. 52C-3-304 reads as rewritten:

"**§ 52C-3-304. Duties of initiating tribunal.**

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this State may issue a certificate or other document and make findings required by the law of the responding state. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 10.5. G.S. 52C-3-305 reads as rewritten:

"**§ 52C-3-305. Duties and powers of responding tribunal.**

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrears, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and State computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;
(11) Award reasonable attorneys' fees and other fees and costs; and
(12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any."

Section 10.6. G.S. 52C-3-306 reads as rewritten:

"**§ 52C-3-306. Inappropriate tribunal.**

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

Section 10.7. G.S. 52C-3-307 reads as rewritten:

"**§ 52C-3-307. Duties of support enforcement agency.**

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;
(2) Request an appropriate tribunal to set a date, time, and place for a hearing;
(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;
(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and
(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 10.8. Article 5 of Chapter 52C of the General Statutes reads as rewritten:

"ARTICLE 5.

"~~Direct~~ Enforcement of Order of Another State Without Registration.

**"§ 52C-5-501. ~~Recognition~~ Employer's receipt of income-withholding order of another state.**

~~(a)~~ An income-withholding order issued in another state may be sent ~~by first-class mail~~ to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order.

~~(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

~~(1) The person or agency designated to receive payments in the income-withholding order; or~~

~~(2) If no person or agency is designated, the obligee.~~

**"§ 52C-5-502. ~~Administrative enforcement of orders.~~**

~~(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.~~

~~(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.~~

**Employer's compliance with income-withholding order of another state.**

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;
(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;
(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:
(1) The employer's fee for processing an income-withholding order;
(2) The maximum amount permitted to be withheld from the obligor's income; and
(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

**"§ 52C-5-503. Compliance with multiple income-withholding orders.**

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

**"§ 52C-5-504. Immunity from civil liability.**

An employer who complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

**"§ 52C-5-505. Penalties for noncompliance.**

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

**"§ 52C-5-506. Contest by obligor.**

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this State in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest.

(b) The obligor shall give notice of the contest to:
(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order; and

(3) The person or agency designated to receive payments in the income-withholding order if no person or agency is designated, to the obligee.

"**§ 52C-5-507. Administrative enforcement of orders.**

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter."

Section 10.9. G.S. 52C-6-601 reads as rewritten:

"**§ 52C-6-601. Registration ~~or [of]~~ of order for enforcement.**

A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement."

Section 10.10. G.S. 52C-6-605 reads as rewritten:

"**§ 52C-6-605. Notice of registration of order.**

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the~~ notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable."

Section 10.11. G.S. 52C-6-606 reads as rewritten:

"**§ 52C-6-606. Procedure to contest validity or enforcement of registered order.**

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after ~~the date of mailing or personal service of~~ notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing."

Section 10.12. G.S. 52C-6-611 reads as rewritten:

"**§ 52C-6-611. Modification of child support order of another state.**

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only ~~if,~~ if G.S. 52C-6-613 does not apply and after notice and ~~hearing,~~ hearing it finds that:

(1) The following requirements are met:

a. The child, the individual obligee, and the obligor do not reside in the issuing state;

b. A petitioner who is a nonresident of this State seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) ~~An individual party or the child~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the ~~individual~~ parties who are individuals have filed a written consent in the issuing tribunal ~~providing that~~ for a tribunal of this State ~~may~~ to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that

controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

~~(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered.~~"

Section 10.13. Article 6 of Chapter 52C of the General Statutes is amended by adding the following new sections to read:

"**§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this State.**

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

**"§ 52C-6-614. Notice to issuing tribunal of modification.**

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction."

Section 10.14. The Reviser of Statutes shall cause to be printed separate from this Part all relevant portions of the official comments to the Uniform Interstate Family Support Act, as amended, as the Reviser deems appropriate.

**PART 11. MISCELLANEOUS AND EFFECTIVE DATE.**

Section 11. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 11.1. Except as otherwise provided in this act, this act becomes effective October 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. ~~HB~~ 301 DATE 7-29-97

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

COMMITTEE SUBSTITUTE ~~3rd ed~~ PCS 2378

Rep.) Ballance

Sen.)

1 moves to amend the bill on page 13 14, line ~~34~~ 1 and ~~40~~ 2

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the lines; and

4

5 ~~on~~ page ~~13, line 11 and~~ page 14, line ~~6~~ 3,

6 by redesignating the subsections as

7 "(f)" and "(g)" respectively.

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
House Bill 301

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

H301-ALN-725 Page 1 of __

Date 8-7 ,1997

Comm. Sub. [yes]PCS2378
Amends Title []

Senator_____

moves to amend the bill on page 4, line 18,
by rewriting the lines to read:
"agency in this State for law enforcement purposes, as permitted pursuant to G.S. 132-1.4. except that the Program shall have access to information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states."; and

further moves to amend the bill on page 6, lines 17 and 18,
by deleting the words "Section 407(d) of P.L. 104-193," and
substituting the words "42 U.S.C. 607,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
House Bill 301

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

H301-ALN-800



Date 8-7 ,1997

Comm. Sub. [yes]PCS2378
Amends Title []

Senator_____

moves to amend the bill on page 43, lines 34-35, by inserting between the lines the following:

"Section 11. The Constitution of North Carolina protects an individual's right to a trial by jury in paternity actions. The only way to abolish this right is by amendment to the Constitution of North Carolina ratified by the qualified voters of this State. The General Assembly finds that because of the small number of jury trials requested in paternity actions in this State, and because of other procedures currently in place or authorized under this act, abolishment of the right would not increase the effectiveness and efficiency of the State's child support enforcement program. Moreover, any net benefit that might result from abolishing the right is substantially outweighed by the importance of preserving the right and thereby upholding the fundamental principles of individual liberty and due process of law. The North Carolina General Assembly, therefore, directs the Department of Human Resources to apply to the United States Department of Health and Human Services for an exemption from implementing the paragraph under 42 USC 666(a)(5) requiring procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury. The Department shall report to the 1997 General Assembly, Regular Session 1998, upon its convening, on the status of the application for exemption."; and

further moves to amend the bill on page 43, by renumbering the remaining sections of Part 11 accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

**NORTH CAROLINA GENERAL ASSEMBLY**
**AMENDMENT**
House Bill 301

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

H301-ALN-800 Page 2 of __

ADOPTED ✓ FAILED _____ TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 301 DATE Aug 7

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

COMMITTEE SUBSTITUTE _____

Rep. )
) Horton
Sen. )

moves to amend the bill on page 2, line 24

( ) WHICH CHANGES THE TITLE

by adding the phrase

"Upon finding that the Department has failed to comply with this section, the District Court shall impose a civil penalty in an amount not to exceed $25,000"

and by adding the identical phrase at line 37.

Withdrawn

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Monday, August 11, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2) **301** Child Support/Fed. Req.

| | |
|---|---|
| Draft Number: | PCS 2383 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **652** Audits

| | |
|---|---|
| Draft Number: | PCS 6315 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

H.B.(CS #1) **1087** Motorized Vehicle Trespass

| | |
|---|---|
| Draft Number: | PCS 7366 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

H.B.(CS #1) **1132** Date Rape Drugs

| | |
|---|---|
| Draft Number: | PCS 4148 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |

TOTAL REPORTED: 4

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Judiciary Committee — 8-7-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Brenda Dougherty | Sprint |
| Karen Carpenter | PCS |
| Curt Williams | Governor's Office |
| David Simmons | ZOA, PA |
| David Ferrell | Hafer, McNamara, Caldwell, McElroy & Cuth |
| Jim Pruitt | |
| Alan Miles | Bailey & Dixon LLP |
| John Polinski | AT&T |
| Bill Bradley | Bradley & Assoc. |
| [illegible] | Poyner & Spruill |
| Phil S. Pruitt | CSC |
| [illegible] | SLAS |
| Tricia Deal | NC Medical Society |
| [illegible] | — |
| Will Leg | NCAHC |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| John McMillan | Manning, Fulton + Skinner PA |
| Wanda Cooper | NCATL |
| Desmond S. Laughinghouse | NS |
| VL McBride | WOSA |
| ANGIE McMICAN | DHR |
| JIM BARNARD | GRNC |
| Barry Burger | NC-CSE |
| Rhonda Little | DSS-CSE |
| Mike Carpenter | NCHSA |
| Rob Hillman | OSA |
| Heather Laird | OSA |
| Bob Blum | AG's Office |
| Robert Rose | Jordan Price Wall |
| Pat Schofield | NCJCDC |
| Wm. Brian Davis | Gov. Office Intern |
| AL DEITCH | YAID/SOA |
| Steve Bartlett | FNC GA |
| John May | NC Pharm Council |
| David Hinden | DFFAC |
| John Runkle | Conservation Council |
| [illegible] | [illegible] |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# AUGUST 11, 1997

The Senate Judiciary Committee met on Monday, August 11, 1997 at 5:30 p.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator William Martin to explain **Senate Bill 311** - 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.

Senator Martin moved to adopt a Proposed Committee Substitute for Senate Bill 311 for discussion. The motion carried by voice vote.

Senator Soles moved to amend the bill Proposed Committee Substitute on Page 2, Line 25 and on Page 3, Line 30 by deleting the words "previously installed". The motion carried by voice vote. (Amendment attached.)

Senator Lucas moved to give the Proposed Committee Substitute a favorable report as amended, roll it into a new Committee Substitute and re-refer it to the Appropriations Committee. The motion carried by voice vote.

Senator Odom was recognized to explain **House Bill 1012** - AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

Senator Odom moved to adopt a Proposed Committee Substitute for House Bill 1012 for discussion. The motion carried by voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 2, Line 29 by adding the word "the" between the words "in" and "use". The motion carried by voice vote. (Amendment attached.)

After further discussion, Senator Rand moved to reconsider the vote on the amendment. The motion carried by voice vote and the amendment was withdrawn.

Tracy Satterwhite, property owner near the proposed Wake County shooting range asked to be allowed to speak on the bill. Permission was given for her to address the Committee.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report and roll it into a new Committee Substitute. The motion carried by voice vote.

Representatives Sutton and Jarrell were recognized to explain **House Bill 584** - AN ACT TO LIMIT, TO MODIFY, AND ENHANCE ATTEMPTING TO ELUDE ARREST STATUTES.

Senator Soles moved to adopt a Proposed Committee Substitute for House Bill 584 for discussion. The motion carried by voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 2, Line 13 by inserting after the word "limit" the following: "during the days and hours when the posted limit is effective". The motion carried by voice vote.

Senator Ballance moved to amend the Proposed Committee Substitute on Page 2, Lines 32 and 34 (see Attached Amendment). After discussion, the motion to adopt the amendment was withdrawn.

Jane Gray, Attorney General's office, was recognized to answer questions from the Committee.

Senator Kerr moved to amend the Proposed Committee Substitute on Page 1, Line 11 and Page 2, Lines 21-22 (see Attached Amendment). The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended, roll it into a new Committee Substitute and re-refer it to the Appropriations Committee. The motion carried by voice vote.

In the absence of Senator Dalton, Senator Cooper explained **Senate Bill 384** - AN ACT TO AMEND THE PUBLIC RECORDS LAW TO PROTECT THE IDENTITY OF EMPLOYEES OF FINANCIAL INSTITUTIONS IN THE EVENT OF ROBBERY.

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 384 for discussion. The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Rules Committee. The motion carried by voice vote.

There being no further business, the meeting adjourned.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# August 11, 1997

| | | |
|---|---|---|
| SB 311 | Smoke Detector Penalties | W. Martin |
| SB 384 | Protect Robbery Witness | Dalton |
| HB 584 | Attempting to Elude Arrest | Jarrell |
| HB 1012 | Shooting Range Protection | Sexton |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997



# HOUSE BILL 311

Short Title: Escheat Sunset Removed. (Public)

Sponsors: Representatives Cansler; Buchanan, Capps, Davis, McComas, Morgan, Sherrill, and Shubert.

Referred to: Finance.

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE SUNSET ON GENERAL STATUTES SECTION 116B-23, EXCLUSION FOR FORFEITED RESERVATION DEPOSITS AND TO MAKE A TECHNICAL CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. Subsection (c) of Section 7A of Chapter 18 of the Session Laws of the Second Extra Session of 1996 reads as rewritten:

"(c) Subsection (a) of this section applies to funds held or collected by business associations on or after July 1, 1996. ~~Subsection (a) of this section expires June 30, 1997, but funds collected or held by business associations before June 30, 1997 shall not escheat.~~"

Section 2. G.S. 116B-23 reads as rewritten:

"**§ 116B-23. Exclusion for forfeited reservation deposits.**

Property or funds withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the services, regardless of any practice or policy of the business association related to the return of withheld funds, ~~is~~ are not unclaimed or abandoned property."

Section 3. This act is effective when it becomes law. All property or funds held as forfeited reservation deposits prior to the effective date of this act pursuant to G.S. 116B-23 shall not escheat.

**North Carolina General Assembly**
**Legislative Services Office**

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

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

August 11, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 311 - SMOKE DETECTOR PENALTIES** - Senator Bill Martin

The Proposed Committee Substitute for Senate Bill 311 would create infractions for violations of the residential rental smoke detector law. The original bill was a recommendation of the N.C. Child Fatality Task Force.

Current law requires landlords to furnish operable smoke detectors in residential rental units. The landlord has the duty to fix or replace defective units when notified by the tenant. The law also spells out whether the landlord or tenant is responsible for replacing old batteries.

Section 1 of the bill would require the landlord to replace or repair a defective smoke detector within 15 days of written notice by the tenant. This section will also require that the smoke detector be operational and in good repair at the beginning of each tenancy.

Section 2 will require the tenant to notify the landlord in writing if the smoke detector is defective.

Section 3 creates penalties for both landlords and tenants for violations of this law. A landlord who fails to provide, install, replace, or repair a detector within 30 days of receipt of written notice by the tenant or a governmental entity shall be responsible for an infraction and subject to a fine of up to $250. A tenant who fails to pay $10 to a landlord for repairing or replacing a disabled or damaged smoke detector presumably caused by the tenant within 30 days of a written request for payment shall be responsible for an infraction and subject to a fine of up to $100.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 4 of the bill appropriates $20,000 to the Department of Insurance for purchase of smoke detectors in conjunction with the NC SAFE KIDS Coalition. Section 5 appropriates $30,000 to DEHNR for informational brochures, print announcements and public service announcements on smoke detectors laws and safety.

The punishment provisions of the bill become effective December 1, 1997. The appropriation provisions are effective retroactively to July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S311-CSSA-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 311
THIS IS A DRAFT 11-AUG-97 12:37:32
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Smoke Detector Penalties. (Public)

Sponsors:

Referred to:

March 5, 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 a landlord fails to provide, install, replace, or repair a smoke detector under the provisions of G.S. 42-42(a)(5) within 30 days of having received written notice from the tenant or any agent of state or local government of the landlord's failure to do so, the landlord shall be responsible for an infraction and shall be subject to a fine of not more than two hundred fifty dollars ($250.00) for each violation. The landlord may temporarily disconnect a smoke detector in a dwelling unit or common area for construction or rehabilitation activities, when such activities are likely to activate the smoke detector or make it inactive.

(a2) If a smoke detector is disabled or damaged, other than through actions of the landlord, the landlord's agents or acts of God, the tenant shall reimburse the landlord ten dollars ($10.00) for repairing or replacing the smoke detector within 30 days of having received written notice from the landlord or any agent of state or local government of the need for the tenant to make such reimbursement. If the tenant fails to make reimbursement within 30 days, the tenant shall be responsible for an infraction and subject to a fine of not more than one hundred dollars ($100.00) for each violation. The tenant may temporarily disconnect a smoke detector in a dwelling unit to replace the batteries or when it has been inadvertently activated.

(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. There is hereby appropriated to the Department of Insurance the sum of $20,000 for FY 1997-98 for the purchase of smoke detectors in conjunction with the North Carolina SAFE KIDS Coalition.

Section 5. There is hereby appropriated to the Department of Environment, Health and Natural Resources the sum of $30,000 for FY 1997-98 for the production of informational brochures, print announcements, and video public service announcements about the State smoke detector law and the importance of installing smoke detectors to protect life.

Section 6. Section 3 of this act becomes effective December 1, 1997, and applies to offenses committed on or after that date. Sections 4 and 5 of this act are effective July 1,

1997. The remainder of this act becomes effective October 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 8-11-97

S. B. No. 311 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. )
) Jones
Sen. )

1 moves to amend the bill on page 2, line 25 & PAGE 3, LINE 30
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORDS "PREVIOUSLY INSTALLED",
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1012-CSRU-009
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1012
THIS IS A DRAFT 11-AUG-97 17:11:11
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Shooting Range Protection. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C.

"Sport Shooting Range Protection Act of 1997.

"§ 14-409.45. Definitions.

The following definitions apply in this Article:

(1) Person. -- An individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) Sport shooting range or range. -- An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

(3) Substantial change in use. -- The current primary use of the range no longer represents the activity previously engaged in at the range.

"§ 14-409.46. Sport shooting range protection.

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was in existence at least three years prior to the effective date of this Article and the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance on the basis of noise or noise pollution, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range was in existence at least three years prior to the effective date of this Article and the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time the range began operation.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range. If there is a substantial change in use of the range after the person acquires title, the person may maintain a nuisance action if the action is brought within one year of the date of a substantial change in use. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance and was in existence at least three years prior to the effective date of this Article, shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance, provided there has been no substantial change in use.

**"§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article."

Section 2. This act is effect when it becomes law but shall not apply to pending litigation.

**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 8-11-97

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~ )
) RAND
Sen. )

1 moves to amend the bill on page 2, line 29

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "IN" AND "USE" THE

4 WORD "THE"

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ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Wednesday, August 13, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **311** Smoke Detector Penalties

| | |
|---|---|
| Draft Number: | PCS 6723 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | Yes |

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL**

H.B. **1012** Shooting Range Protection

| | |
|---|---|
| Draft Number: | PCS A413 |
| Sequential Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

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.

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies."

Section 2. G.S. 20-141(j) and G.S. 20-17(a)(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**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 584 DATE 8-11-97

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~ )
) Reed
Sen. )

1 moves to amend the bill on page 2, line [illegible] 13
2 ( ) WHICH CHANGES THE TITLE
3 by ~~inserting before the period the following:~~ "
4 inserting after the word "limit" the
5 following: "during the days and hours
6 when the ~~[illegible]~~ Posted limit is effective"
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SIGNED Tony Reed

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. 584 DATE 8-11-97

~~S. B. No.~~ 584 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~ )
) Ballance
Sen. )

1 moves to amend the bill on page 2, line 32
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "Division shall" and substituting
4 "court may";
5 and on page 2, line 34, by deleting
6 "three years" and substituting "one year"
7 and on page 2, line 32, by inserting
8 after the word "for" and before the word "one"
9 the words "up to"
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SIGNED Lynn G. Ballance

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

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. 584 DATE 8-11-97

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

COMMITTEE SUBSTITUTE _____

Rep. ) Kerr
)
Sen. )

moves to amend the bill on page 2, line 21-22

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety, and on page 1, line 11 by adding the following. "Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor."

SIGNED Ken

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

**PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)**

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

# JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, August 12, 1997

**SENATOR COOPER,**

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **584** Attempting to Elude Arrest

| | |
|---|---|
| Draft Number: | PCS 6317 |
| Sequential Referral: | None |
| Recommended Referral: | Appropriations |
| Long Title Amended: | No |

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 384
Proposed Committee Substitute S384-PCS1874

Short Title: Robbery Witness LRC. (Public)

Sponsors:

Referred to:

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED TO AMEND THE PUBLIC RECORDS LAW TO PROTECT THE IDENTITY OF EMPLOYEES OF FINANCIAL INSTITUTIONS IN THE EVENT OF ROBBERY.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the need to amend the public records law to protect the identity of employees of financial institutions in the event of robbery.

Section 2. The Legislative Research Commission may make an interim report of its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly and shall make a final report to the 1999 General Assembly.

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

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Monday, August 11, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL**

S.B. **384** Protect Robbery Witness

| | |
|---|---|
| Draft Number: | PCS 1874 |
| Sequential Referral: | None |
| Recommended Referral: | Rules |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

(Also changes short title)

VISITOR REGISTRATION SHEET

Aug 11 97

Name of Committee — Date

J. - / - Cooper,

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| Rob Schofield | NCJCDC |
| Tom Bennett | NCCFTF |
| Cathy Lohr | NC Assn of Fire Chiefs |
| Jim Pharr | Gaston Co. Fire Marshal |
| Bill Funderburk | NCSHP Raleigh |
| W.R. Price | NCSHP Raleigh |
| Col Ed Norton | NCSHP Raleigh |
| Charles Cromer | NCATL |
| Dick Zak | NCATL |
| Bill Scoggin | NCBA |
| [illegible] | NC Assoc of Realtors |
| Jeanne Givens | NC DEHNR Raleigh |
| David Kelly | NCCCPS |
| Jim Barnard | GRNC |
| Sheila H. McInnes | NC DOI |
| Grace Satterwhite | |
| Kim Smith | NCLM |
| Jim Tate | NHA/NC |
| Paula A. Wolf | Covenant with NC's Children |
| Mike Carpenter | NCHBA |
| Jane B. Gray | DOJ |
| Lucia C. Dell | NC Medical Society |

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
| --- | --- |
| [signature] | CCPS |
| Shari Fischer | Parkwood Durham resident |

# MINUTES
# SENATE JUDICIARY COMMITTEE
# AUGUST 19, 1997

The Senate Judiciary Committee met on Tuesday, August 19, 1997 at 9:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Culpepper to explain **House Bill 115** - AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Miller moved to adopt a Proposed Committee Substitute for House Bill 115 for discussion. The motion carried by voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the Proposed Committee Substitute.

The following people were recognized to speak on the bill or to answer questions from the Committee:

Ruth Sappie - Department of Transportation
Hugh Tilson - representing the N. C. Hospital Association
Don Beason - representing the N. C. Motorcycle Association

Senator Miller moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Finance Committee. The motion carried by voice vote.

Senator Lee was recognized to explain **House Bill 898** - AN ACT TO AMEND THE PUBLIC RECORDS LAW TO CLARIFY PROVISIONS CONCERNING CORRESPONDENCE.

Senator Lee moved to adopt a Proposed Committee Substitute for House Bill 898 for discussion. The motion carried by voice vote.

Senator Lee moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Rules Committee. The motion carried by voice vote.

There being no further business, the meeting adjourned at 9:30 a.m.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

# AGENDA
# SENATE JUDICIARY COMMITTEE
# August 19, 1997

| | | |
|---|---|---|
| HB 115 | 1997 Technical Amendments | Culpepper |
| HB 898 | Public Records/Meeting Law Amend. | Lee |

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 115*
Committee Substitute Favorable 4/14/97

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to:

February 12, 1997

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.

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August 19, 1997

**MEMORANDUM**

**TO:** Senator Roy Cooper, Chair, Senate Judiciary Committee

**FROM:** O. Walker Reagan, Committee Co-Counsel

**RE:** **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 115 - 1997 TECHNICAL CORRECTIONS** - Representative Culpepper.

The Proposed Senate Committee Substitute for House Bill 115 is primarily a recommendation of the General Statutes Commission to correct technical errors and to make conforming changes to various statutes and session laws. Sections 1 through 27 were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. **Section 13 has been deleted from the bill because the section it was amending has been repealed. The repeal and deletion have occurred since the General Statutes summary was prepared.** This summary will cover the remaining sections of the bill. The changes beginning with Section 28 have been identified by legislative and agency staff, many of which are correcting errors or duplicative section numbers in laws adopted during the 1997 Session.

Section 28 amends G.S. 1-339.25(a) to correct a redlining error and to make a drafting style change. Three "the's" were inadvertently not redlined out, and the word "said" is being replaced with "the" to be consistent with the General Assembly's preferred drafting style.

Section 29 amends G.S. 20-4.01(27)d1 to conform the definition of a moped to include mopeds that do not require pedals.

Section 30 amends G.S. 20-28.2(a) to include the correct cross references for impaired driving offenses for which drivers licenses may be revoked.

Section 31 amends G.S. 20-28.3(a) to eliminate a redundant definition identically defined in the preceding statutory section.

Sections 32 and 33 amend two subsections of G.S. 20-7 to correct inconsistencies and ambiguities in changes made for motorcycle drivers licenses and graduated drivers licenses. These changes make it clear that a person must have either a regular drivers license

or a full provisional license, and either a motorcycle endorsement or a motorcycle learner's permit, in order to drive a motorcycle.

Section 34 amends G.S. 20-28.6 that provides for the forfeiture of the right to register a vehicle if the person is convicted of driving while impaired while the person's license was revoked for driving while impaired. This change makes it clear that this provision only applies when both these conditions exist. This section also clarifies that whenever an officer requests a person to submit to a chemical analysis after being stopped for impaired driving the person must be informed of their implied consent rights.

Section 35 amends G.S. 20-183.8C(b) to correct a reference that was reversed, originally enacted as "G.S. 20-187.3" instead of "G.S. 20-183.7".

Section 36 amends G.S. 20-376(1) to correct the reference to federal motor carrier safety regulations.

Sections 37 and 38 amend G.S. 20-381(1a) and G.S. 20-381(3), respectively, which specify the duties of DMV related to motor carrier safety, to conform state law to the federal regulations related to inspection authority for safety standards of motor carrier vehicles, and to clarify that regulation of transportation of hazardous materials includes transportation of hazardous commodities.

Section 39 amends G.S. 53-212.1 to correct the reference to a citation to the Federal Reserve Act.

Section 40 amends the catchline for G.S. 58-51-61 to change the section number because of a conflict in this section number that has been previously assigned this session.

Section 41 will amend a section of Senate Bill 843, Insurance Technical Changes, if it is enacted, to conform to changes in reporting requirements made in Senate Bill 843.

Section 42 amends G.S. 58-68-45(b)(3) to correct an incorrect subsection reference.

Section 43 repeals G.S. 105-305(b), (d), and (e) dealing with listing of personal property for intangibles taxation purposes that were inadvertently not repealed when the State's intangible tax was repealed.

Section 44 amends G.S. 113-291.3(b)(8) by deleting words unrelated to the transportation of deer meat into the State for sale.

Section 45 amends G.S. 120-349(a) to clarify that the session laws may be referred to either as "Session Law" or "S.L." by the enrolling clerk, instead of just as "S.L.".

Section 46 corrects the name of the Joint Legislative Education Oversight Committee in two places where the word "Oversight" was inadvertently omitted.

Section 47 amends G.S. 122C-261(d) to eliminate redundant language and to clarify that a person committed to outpatient treatment when judicially determined to be mentally ill is to be notified by the treating physician of the times for scheduled treatments, not by the clerk or magistrate.

Section 48 amends G.S. 130A-412.1(g) to correct a grammatical error by deleting an unnecessary "a".

Section 49 amends G.S. 131E-146(1) to conform the definition of "ambulatory surgical facility" to changes made in the law in 1993. This section also makes clear that one operating room facilities licensed under the law prior to the changes in 1993 may continue to operate even though current law would require two operating rooms to qualify for licensure.

Section 50 amends G.S. 143-215.84(e) to change the subsection designation because of a conflict with the same subsection designation having been previously assigned this session.

Section 51 amends a local law governing the Currituck County Game Commission to make clear and consistent that the application fee is nonrefundable in all situations.

Section 52 amends the 1997 Redistricting law to correct the citation to 1991 Redistricting law that is being repealed.

Section 53 corrects a citation to a subsection being repealed from its session law citation to its General Statutes citation.

Section 54 corrects the prefatory language to a bill section amending the title to Article 5 of Chapter 130A that was incorrectly cited as Chapter 30.

Section 55 makes a technical correction to a session law by adding a quotation mark that was omitted.

Unless otherwise specifically provided, the bill will become 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: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: July 14, 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 recommended by the General Statutes Commission are in Sections 1 through 28 of the bill. These amendments correct spelling, typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, update or correct statutory references, and authorize the Revisor of Statutes to renumber sections or parts of sections if needed by the General Assembly's new computer programs.

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).

Sections 4, 5, and 6. S.L. 1997-181 enacted Revised Article 8 of the Uniform Commercial Code with conforming amendments to various sections in Article 9 of the Code. These three section make corrections to the conforming amendments to Article 9. Section 4 deletes an unnecessary phrase in G.S. 25-9-105(1)(h), and Sections 5 and 6 insert conforming

citations in G.S. 25-9-312(7) and G.S. 25-9-303(1), respectively. These conforming amendments were inadvertently omitted from the material sent to this State by the National Conference of Commissioners on Uniform State Laws.

Section 7. This section amends G.S. 28A-18-2(a) to correct inadvertent drafting errors. The language "but shall be disposed of as provided in the Intestate Succession Act" needs to be moved from its present position, at the end of the last sentence of the subsection, to the next to the last sentence of the subsection. The language actually belongs with the subject phrase "[t]he amount recovered in such action" of the next to the last sentence. The language was separated in the course of successive amendments to the subsection.

Section 8. 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 9 and 10. These sections amend G.S. 68-42 and 68-43, respectively, to correct the spelling of "Shackelford", which evidently is spelled "Shackleford".

Section 11. This section amends G.S. 81A-26(a)(4) to insert words that were apparently inadvertently omitted when the section was enacted.

Section 12. This section amends G.S. 90-89(c)15. to change the spelling of "psilocyn" to the preferred spelling, "psilocin".

Section 13. 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 14. This section amends G.S. 106-727(b) to delete an extra "of " that occurred as the result of a redlining error.

Section 15. 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 16. This section corrects a citation in G.S. 115C-81.2(e).

Section 17. This section deletes an extra "the" in G.S. 115C-302(f).

Sections 18 and 19. These two sections amend G.S. 115D-2.1. Section 18 amends subdivision (b)(3) to correct a citation. Section 19 amends subsection (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 20. 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 21. This section amends G.S. 131D-20(6) to correct a typographical error. The word "and" should have been "an".

Section 22. 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 23. 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 13.

Section 24. This section makes three basic amendments to G.S. 153A-301(a). First, in subdivision (8), it conforms the style of reference to articles and chapters of the General Statutes to the current style. In subdivision (10), it changes the style of the number to arabic numerals instead of words. In that same subdivision, it deletes an extra "the" in subsubdivision c.

Section 25. 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 26. 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)".

Section 27. This section specifically authorizes the Revisor of Statutes to renumber sections and parts of sections as necessary for the General Assembly's new computer programs. There will be no change in the law itself.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 115*
Committee Substitute Favorable 4/14/97
Proposed Senate Committee Substitute H115-PCS1452

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to:

February 12, 1997

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, AND TO MAKE OTHER TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

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)~~ 14-33(c)(1), or 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. 25-9-105(1)(h), as amended by Section 3 of S.L. 1997-181, reads as rewritten:

"(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;".

Section 5. G.S. 25-9-312(7), as amended by Section 16 of S.L. 1997-181, 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. 25-9-115 or G.S. 25-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or G.S. 25-9-115(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 6. G.S. 25-9-303(1) reads as rewritten:

"(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in G.S. 25-9-115, 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken before the security interest attaches, it is perfected at the time it attaches."

Section 7. G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' ~~fees.~~ fees, but shall be disposed of as provided in the Intestate Succession Act. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term ~~time, but shall be disposed of as provided in the Intestate Succession Act.~~ time."

Section 8. 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 9. 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 10. 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 11. G.S. 81A-26(a)(4) reads as rewritten:

"(4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,".

Section 12. G.S. 90-89(c)15. reads as rewritten:

"15. ~~Psilocyn.~~ Psilocin."

Section 14. 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 15. 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 16. 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 17. 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 18. G.S. 115D-2.1(b)(3) reads as rewritten:

"(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in ~~G.S. 115D-63~~ G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member."

Section 19. 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 20. 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 21. 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 22. 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 23. 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 24. G.S. 153A-301(a) reads as rewritten:

"(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.

(2) Fire protection.

(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in ~~General Statutes Chapter 139;~~ Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by ~~General Statutes Chapter 156;~~ Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by ~~General Statutes Chapter 143, Article 21.~~ Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
a. The population of the county is over ~~five hundred thousand~~ 500,000 according to the most recent federal decennial census.
b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
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~~ the county's agreement to pay such percentages can be amended to reflect that difference."

Section 25. Chapter 261 of the 1995 Session Laws is repealed.

Section 26. 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 27. The Revisor of Statutes is authorized to renumber or reletter those sections and any parts of sections of the General Statutes that have been published in the General Statutes of North Carolina prior to the 1997 Session of the 1997 General Assembly and have a number or letter designation that is not compatible with the General Assembly's computer program database to be implemented in 1997 or 1998. This authority is in addition to the authority contained in G.S. 164-10.

Section 28. Effective January 1, 1998, G.S. 1-339.25(a), as amended by Section 18 of S.L. 1997-83 and Section 1 of S.L. 1997-119, 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 a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). ~~the the the~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of the 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~~ the 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) of this section."

Section 29. 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~~ wheels, no external shifting device, and 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 30. G.S. 20-28.2(a), as amended by Section 1.1 of S.L. 1997-379, reads as rewritten:

"(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(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), ~~20-17(1), or 20-17(9),~~ 20-17(a)(1), or 20-17(a)(9), if the offense involves impaired driving."

Section 31. G.S. 20-28.3(a), as enacted by Section 1.2 of S.L. 1997-379, reads as rewritten:

"(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~~ driving 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.~~ revocation as defined in G.S. 20-28.2(a)."

Section 32. Effective December 1, 1997, G.S. 20-7(a1), as amended by Section 8 of S.L. 1997-16, reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person ~~must have~~ shall have:

(1) ~~a motorcycle learner's permit, a~~ A full provisional license with a motorcycle learner's permit; ~~and a motorcycle endorsement, or a~~

(2) A regular drivers license with a motorcycle learner's permit; or

(3) Either:

a. A full provisional license; or

b. A regular drivers license, ~~and~~ with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person ~~must~~ shall demonstrate competence to drive a motorcycle ~~by~~ by:

(1) ~~passing~~ Passing a road ~~test and~~ test;

(2) Passing a written or oral test concerning ~~a motorcycle~~ motorcycles; and

(3) ~~must pay~~ Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 33. Effective December 1, 1997, G.S. 20-7(a2), as enacted by Section 9 of S.L. 1997-16, reads as rewritten:

"(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has ~~a limited provisional license or~~ a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant ~~must~~ shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's

permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. ~~The holder of a motorcycle learner's permit who has a limited provisional license may drive the motorcycle only at a time when the license holder could drive a motor vehicle without supervision under G.S. 20-11.~~ The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

Section 34. (a) G.S. 20-28.6, as enacted in Section 1.5 of S.L. 1997-379, reads as rewritten:

"**§ 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 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 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 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 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."

(b) G.S. 20-139.1(b5), as enacted in Section 5.4 of S.L. 1997-379, reads as rewritten:

"(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. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). 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 35. G.S. 20-183.8C(b), as amended by Section 7 of S.L. 1997-29, reads as rewritten:

"(b) Type II. -- It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee for one of these actions in an amount that differs from the amount set in ~~G.S. 20-187.3.~~ G.S. 20-183.7."

Section 36. G.S. 20-376(1) reads as rewritten:

"(1) Federal safety regulations. -- The federal motor carrier safety regulations contained in 49 ~~U.S.C. Subchapter B, Parts 350 through 399.~~ C.F.R. Parts 382 and 390 through 398."

Section 37. G.S. 20-381(1a) reads as rewritten:

"(1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may ~~stop and inspect a vehicle~~ stop, enter upon, and perform

inspections of motor carriers' vehicles in operation to determine ~~if it is in~~ compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles."

Section 38. G.S. 20-381(3) reads as rewritten:

"(3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous ~~materials.~~ materials and other commodities."

Section 39. Effective June 27, 1997, G.S. 53-212.1, as amended by Section 2.1 of S.L. 1997-241, reads as rewritten:

"**§ 53-212.1. Bank agent for deposit institution affiliate.**

A bank may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section 23A(b)(1) of the Federal Reserve Act, as amended ~~(12 U.S.C. § 37c(b)(1)) (but~~ (12 U.S.C. § 371c(b)(1)), but without regard to whether the bank or the affiliate is a member of the Federal Reserve ~~System).~~ System."

Section 40. (a) The catch line for G.S. 58-51-61, as enacted in Section 1 of S.L. 1997-312, reads as rewritten:

"**~~§58-51-61.~~ § 58-51-62. Coverage for reconstructive breast surgery resulting from mastectomy.**"

(b) G.S. 58-50-155(a2), as enacted in Section 4 of S.L. 1997-312, reads as rewritten:

"(a2) Notwithstanding G.S. 58-50-123(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by ~~G.S. 58-51-61.~~ G.S. 58-51-62."

(c) Subsection (a) of this section is effective retroactively to July 10, 1997. Subsection (b) of this section becomes effective January 1, 1998.

Section 41. If Senate Bill 843 of the 1997 General Assembly becomes law, G.S. 58-31-45 reads as rewritten:

"**§ 58-31-45. Report required of Commissioner.**

The Commissioner must submit to the Governor a full report of his official action under this Article, with such recommendations as commend themselves to ~~him, and it shall be embodied in or attached to his biennial report to the General Assembly.~~ him."

Section 42. G.S. 58-68-45(b)(3), as enacted by S.L. 97-259, reads as rewritten:

"(3) Violation of participation or contribution rules. -- The policyholder has failed to comply with a material plan provision relating to employer contribution or group participation rules, as permitted under ~~G.S. 58-68-40(c)~~ G.S. 58-68-40(d) in the case of the small group market or pursuant to this Chapter in the case of the large group market."

Section 43. (a) G.S. 105-305(b), (d), and (e) are repealed.

(b) This section becomes effective July 1, 1997.

Section 44. G.S. 113-291.3(b)(8), as enacted by Section 15 of S.L. 1997-142, reads as rewritten:

"(8) The ~~sale of the~~ edible parts of deer raised domestically in another state may be transported into this State and resold as a meat product for human consumption when the edible parts have passed inspection in the other state by that state's inspection agency or the United States Department of Agriculture."

Section 45. G.S. 120-34(a) reads as rewritten:

"(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the ~~letters 'S.L.'~~ phrase 'Session Law' or the letters 'S.L.' followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Section 46. (a) G.S. 120-70.80 reads as rewritten:

**"§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.**

The Joint Legislative Education Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) G.S. 120-70.82(a) reads as rewritten:

"(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs."

Section 47. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. ~~If a physician or eligible psychologist recommends outpatient commitment, the clerk or magistrate~~ The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

Section 48. G.S. 130A-412.1(g), as enacted by Section 2 of S.L. 1997-192, reads as rewritten:

"(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from ~~a~~ civil liability arising from gross negligence."

Section 49. (a) G.S. 131E-146(1) reads as rewritten:

"(1) 'Ambulatory surgical facility' means a facility designed for the provision of ~~an ambulatory surgical program.~~ a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least ~~one~~ two designated operating ~~room~~ rooms and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility."

(b) This section conforms the definition of the term "ambulatory surgical facility" in the Ambulatory Surgical Facility Licensure Act to the definition of the same term in G.S. 131E-176, to reflect the amendment made to that statute by Section 2 of Chapter 7 of the 1993 Session Laws. However, ambulatory surgical facilities with only one operating room developed prior to the effective date of Chapter 7 of the 1993 Session Laws may still be licensed as if this section had not been enacted.

Section 50. Effective October 1, 1997, G.S. 143-215.84(e), as enacted by Section 4 of S.L. 1997-394, reads as rewritten:

"~~(e)~~ (f) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial

action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction."

Section 51. Section 8 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 6 of Chapter 622 of the 1981 Session Laws and by Section 1 of S.L. 1997-163, reads as rewritten:

"Sec. 8. To obtain a license for either a stationary bush blind or a floating bush blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing:

(1) Twenty-five dollars ($25.00) if the applicant is a resident of North Carolina; or

(2) Two hundred fifty dollars ($250.00) if the applicant is not a resident of North Carolina.

In addition to ~~the~~ this nonrefundable application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars ($10.00). Applicants shall submit proof of North Carolina residency along with each application.

Applicants who are not residents of North Carolina but who were the holders of licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina residents for all subsequent renewals of that application. However, this exemption terminates if the blind license is not renewed during any subsequent annual renewal period and is not transferable to any different blind location.

Float blinds when licensed shall bear the license number or tag, and the same shall be displayed in a prominent or conspicuous place upon the blind."

Section 52. Section 1 of S.L. 1997-11 reads as rewritten:

"Section 1. That part of Section 1 of Chapter ~~6~~ 7 of the Session Laws of the 1991 Extra Session which rewrote G.S. 163-201(a) is repealed."

Section 53. Section 1 of S.L. 1997-97 reads as rewritten:

"Section 1. ~~Subsection (f) of Chapter 33 of the 1993 Session Laws~~ G.S. 113-291.9(g) is repealed."

Section 54. The prefatory language of Section 1 of S.L. 1997-172 reads as rewritten:

"Section 1. The title of Article 5 of Chapter ~~30~~ 130A of the General Statutes reads as rewritten:".

Section 55. Section 7(a) of S.L. 1997-221 is amended by adding quotation marks at the end.

Section 56. Unless otherwise provided, this act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY**
**SENATE**

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, August 19, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **115** 1997 Technical Corrections

| | |
|---|---|
| Draft Number: | PCS 1452 |
| Sequential Referral: | None |
| Recommended Referral: | Finance |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 898*
Committee Substitute Favorable 4/23/97

Short Title: Public Records Law Amendments. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PUBLIC RECORDS LAW TO CLARIFY PROVISIONS CONCERNING CORRESPONDENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-6 is amended by adding a new subsection to read:

"(g) Upon receipt of a request by any person to inspect, examine or copy letters or other documents transmitted or received by a public agency by any mode of delivery or communication (including, but not limited to, the United States Postal Service, commercial postal delivery, electronic means, or hand delivery) the custodian of the agency's records: (i) shall promptly sort the letters or other documents to remove any items that are not public records, (ii) is not required to permit the inspection, examination or copying of items that are not public records, and (iii) is not required to permit the inspection, examination or copying of items that are public records until such sorting has occurred. Nothing in this section restricts the right of the addressee or recipient to route a letter or other document received in the course of public business to another person, but the addressee or recipient may make copies of the letter or other document and make them available for inspection and copying as provided by this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H898-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 898
THIS IS A DRAFT 18-AUG-97 20:58:07
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: UNC Public Records/Open Meeting. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STUDY OF THE RELATIONSHIP OF THE OPEN MEETINGS LAW AND THE PUBLIC RECORDS LAW TO INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the relationship of the Open Meetings Law, as set forth in Article 33C of Chapter 143 of the General Statutes, and the Public Records Law, as set forth in Chapter 132 of the General Statutes, to the University of North Carolina and its constituent institutions. The study shall include at least the following:

(1) Excluding from the definition of public records, attorney work product, certain donor and alumni records, and drafts of certain documents;

(2) Inclusion of faculty as professional staff under the Open Meetings Law; and

(3) Other ways to assist the University system to best serve its educational purposes within the public purposes of the Open Meetings Law and the Public Records Law.

Section 2. The Legislative Research Commission may make an interim report to the 1997 General Assembly, 1998 Regular Session, and shall make a final report to the 1999 General Assembly.

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

**JUDICIARY COMMITTEE REPORT**
Sen. Roy A. Cooper, III, Chairman

Tuesday, August 19, 1997

**SENATOR COOPER,**
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,**
**BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) **898** Public Records Law Amendments

| | |
|---|---|
| Draft Number: | PCS 7370 |
| Sequential Referral: | None |
| Recommended Referral: | Rules |
| Long Title Amended: | Yes |

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

19 August 1997

Name of Committee: Cooper

Date

VISITORS: Please sign below and return to Committee Clerk.

| NAME | FIRM OR STATE AGENCY AND ADDRESS |
|---|---|
| [illegible] | NCSA |
| Clifton B. [illegible] | U.N.C. G.A. |
| HUGH TILSON | NCHA |
| Kim Smith | NCLM |
| Alan Miles | Bonding & Dixon LLP |
| Ruth Safelare | DOT |
| DAVE A MOODY | DMV ENFORCEMENT |
| Ken Smith | Capital Strategies |
| Erika Wolf | Covenant W/ NC's Children |
| Cam Cowan | BPM |
| Chris Sea | NC ASC |
| Eddie Caldwell | H McC McC P.A. |
| [illegible] | Hon. Cy. to Cowan |
| Jack Cozart | Parker Poe |
| [illegible] | UNC |
| Curt Williams | Gov's Office |
| Alice Garland | Electricities |
| Floyd Lewis | General Statutes Commission |
| Deborah Ellis | ACLU |
| Tom V. Bennett | NCCFTF |
| [illegible] | NCPS |

# SENATE JUDICIARY COMMITTEE

## PUBLIC HEARING

## SB 893

## "AN ACT TO REGULATE CHARITABLE BINGO"

## MAY 20, 1997

SEN. ROY A. COOPER, III, CHAIRMAN

**MINUTES OF PUBLIC HEARING**
**SENATE JUDICIARY COMMITTEE**
**MAY 20, 1997**

The Senate Judiciary Committee held a Public Hearing on Tuesday, May 20, 1997 in the Auditorium of the Legislative Building to hear testimony concerning Senate Bill 893 - AN ACT TO REGULATE CHARITABLE BINGO.

Senator Cooper called the Public Hearing to order at 3:30 p.m. and briefly explained the purpose of the bill.

The following people were recognized to speak on the bill beginning with Mr. Bewley who favored the bill and alternating "for and against":

Larry Bewley
Melvin Sutterland of Wilson
Jerry Hendrick
Mildred Bullock
Betty Rowland
Frances Matthews of Wilson
John Rustin with the N. C. Center for Family Policy
Rena Mae Chase
Brenda Brewer with the N. C. Charitable Bingo Association
Karen Wall
Garrett Shropshire
Darla Hargett
Archie Hargett
Chris Wilder
Barbara Lineberger, Exec. Director of the YWCA in Wilson
Carolyn Jenkins
Ed Hedgepeth
Hazel Walker
Archie Taylor
Sharon Henderson
Lee Barefoot with the Exchange Club of Wilson
Delna Dupree
Mitchell Baddour with the Knights of Columbus in Goldsboro
Scott Charles of Goldsboro
Coley Hunsucker
Otis Carter representing Concerned Citizens for Beach Bingo

Written comments (where available) given by speakers are attached to the minutes along with various other information and petitions pertaining to the bill.

The Public Hearing adjourned at 4:35 p.m.

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 893

Short Title: Regulating Charitable Bingo. (Public)

Sponsors: Senators Weinstein; Ballance, Carpenter, Cochrane, Conder, Cooper, Dalton, Kincaid, Ledbetter, Odom, Soles, and Warren.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHARITABLE BINGO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.5 reads as rewritten:

"**§ 14-309.5. Bingo.**

(a) The purpose of the conduct of bingo is to insure a maximum availability of the net proceeds exclusively for application to the charitable, nonprofit causes and undertakings specified ~~herein;~~ in this Part; that the only justification for this Part is to support ~~such~~ these charitable, nonprofit causes; and ~~such~~ this purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, prevent participation by criminal and other undesirable elements, and prevent the diversion of funds for the purpose herein authorized.

(b) It is lawful for an exempt organization to conduct bingo games in accordance with the provisions of this Part. Any licensed exempt organization who conducts a bingo game in violation of any provision of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction ~~such~~ the licensed exempt organization and any person affiliated, in any way, with the licensed exempt organization shall not conduct a bingo game for a period of one year. It is lawful to participate in a bingo game conducted pursuant to this Part. It shall be a Class I felony for any person: (i) to operate a bingo game without a license; (ii) to operate a bingo game while license is revoked or suspended; (iii) to willfully misuse or misapply any moneys received in connection with any bingo game; or (iv) to contract with or provide consulting

services to any licensee. If the Department of Human Resources finds that any licensed exempt organization who conducts a bingo game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a bingo game conducted in accordance with this Part.

(c) It is lawful for an exempt organization to conduct charity game ticket games in accordance with the provisions of this Part. Any licensed exempt organization that conducts a charity game ticket game in violation of this Part shall be guilty of a Class 2 misdemeanor. Upon conviction, that exempt organization shall not conduct a bingo game or charity game ticket game for a period of one year. It is lawful to participate in a charity game ticket game conducted pursuant to this Part. It shall be a Class I felony for any person:

(1) To sell or otherwise furnish charity game tickets other than in a charity game ticket game conducted by a licensed exempt organization in accordance with the provisions of this Part;

(2) To operate a charity game ticket game without a license;

(3) To operate a charity game ticket game while a license is revoked or suspended;

(4) To willfully misuse or misapply any moneys received in connection with any charity game ticket game;

(5) To contract with or provide consulting services to any licensee.

If the Department of Human Resources finds that any licensed exempt organization that conducts a charity game ticket game is in violation of any provision of this Part, the Secretary, or his designee, may immediately suspend that license for at least 30 days. Within 30 days, the licensed exempt organization may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine whether there was, in fact, a violation of this Part and whether the Department's actions were proper. The Department may initiate a contested case pursuant to Chapter 150B of the General Statutes by which an administrative law judge may determine if grounds exist to extend the suspension or to permanently revoke the license based on the evidence. It shall not constitute a violation of any State law to advertise a charity game ticket game conducted in accordance with this Part."

Section 2. G.S. 14-309.6 reads as rewritten:

"**§ 14-309.6. Definitions.**

For purposes of this Part, the term:

(1) 'Exempt organization' means an organization that has been in continuous existence in the county of operation of the bingo game for at least one year and that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. (If the organization has local branches or chapters, the term 'exempt organization' means the local branch or chapter operating the bingo game);

(2) 'Bingo game' means a specific game of chance played with individual cards having numbered squares ranging from one to 75, in which prizes are awarded on the basis of designated numbers on ~~such~~ the cards conforming to a predetermined pattern of ~~numbers (but shall not include "instant bingo" which is a game of chance played by the selection of one or more prepackaged cards, with winners determined by the appearance of a preselected designation on the card);~~ numbers;

(3) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 5.

(4) 'Local law-enforcement agency' means for any bingo game conducted outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force:

a. The county police force; or

b. The county sheriff's office in a county with no county police force;

(5) 'Local law-enforcement agency' means the municipal police for any bingo game conducted within the corporate limits of a municipality having a police force;

~~(6) 'Beach bingo games' means bingo games which have prizes of ten dollars ($10.00) or less or merchandise that is not redeemable for cash and that has a value of ten dollars ($10.00) or less; and~~

(7) 'Licensed exempt organization' means an exempt organization which possesses a currently valid ~~license.~~ license;

(8) 'Charity game ticket' means a folded or banded ticket or card with perforated break-open tabs, made completely of paper or paper products, the face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prizewinners with the maximum amount which can be charged for each card being fifty cents (50¢);

(9) 'Charity game ticket game' means the sale of a separate package or series of packages consisting of one complete set of charity game tickets in which all tickets in the set bear the same serial number; and

(10) 'Jackpot bingo game' means a type of bingo game which may be played only once during any session of bingo in which a player must cover a specified number of spaces to win."

Section 3. G.S. 14-309.7 reads as rewritten:

"**§ 14-309.7. Licensing procedure.**

(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) for a Class A bingo license and three hundred dollars ($300.00) for a Class B bingo license to defray the cost of issuing bingo ~~licenses and~~ licenses, handling bingo audit ~~reports.~~ reports, and regulating the operation of bingo games. The fees collected shall be ~~deposited in the General Fund of the State.~~ placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. ~~This~~ Each class of bingo license shall expire one year after the granting of the license. ~~This~~ Each class of bingo license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee. The day or days of the week and the time of day a session of bingo shall be operated by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played.

(a1) An exempt organization may not operate a charity game ticket game at a location without a license. Application for a charity game ticket game license shall be made to the Department of Human Resources on a form prescribed by the Department. The Department shall charge an annual application fee of two hundred dollars ($200.00) for a Class A charity game ticket game license and three hundred dollars ($300.00) for a Class B charity game ticket game license to defray the cost of issuing charity game ticket game licenses, handling charity game ticket game audit reports, and regulating the operation of charity game ticket games. An exempt organization shall hold a Class A or Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class A charity game ticket game license. An exempt organization shall hold a Class B bingo license in order to make application to the Department of Human Resources for and to hold a Class B charity game ticket game license. The fees collected shall be placed in a special fund known as the Bingo Regulation Enforcement Fund to be used to implement this Part. Each class of charity game ticket game license shall expire one year after the granting of the license. Each class of charity game ticket game license may be renewed yearly, if the applicant pays the application fee and files an audit

with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law enforcement agency in the county or municipality in which the licensee intends to operate before charity game ticket games are conducted in conjunction with a bingo game conducted by the licensee. The day or days of the week and the time of day charity game ticket games are conducted by an exempt organization shall appear on the face of the license. The license shall be posted in a conspicuous location on the premises at all times when bingo is being played or charity game ticket games are conducted.

(b) Each application and renewal application for a Class A or Class B bingo license and a Class A or Class B charity game ticket game license shall contain the following information:

(1) The name and address of the applicant and if the applicant is a corporation, association or other similar legal entity, the name and home address of each of the officers of the organization as well as the name and address of the directors, or other persons similarly situated, of the organization.

(2) The name and home address of each of the members of the special committee.

(3) A copy of the application for recognition of exemptions and a determination letter from the Internal Revenue Service and the Department of Revenue that indicates that the organization is an exempt organization and stating the section under which that exemption is granted; except that if the organization is a State or local branch, lodge, post, or chapter of a national organization, a copy of the determination letter of the national organization satisfies this requirement.

(4) The location at which the applicant will conduct the bingo games. If the premises are leased, a copy of the lease or rental agreement.

(5) The day or days of the week on which the applicant will conduct the bingo games and charity game ticket games.

(6) The time of day at which the applicant will begin a bingo game and the time of day by which the bingo game will end.

(c) In order for an exempt organization to have a member familiar with the operation of bingo present on the premises at all times when bingo is being played and for this member to be responsible for the receiving, reporting and depositing of all revenues received, the exempt organization may pay one member for conducting a bingo game. ~~Such~~ The pay shall be on an hourly basis only for the time bingo is actually being played and shall not exceed one and one-half times the existing minimum wage in North Carolina. The member paid under this provision shall be a member in good standing of the exempt organization for at least one year and shall not be the lessor or an employee or agent of the lessor. No other person may be compensated for conducting a bingo game from funds derived from any activities occurring in, or simultaneously with, the playing of bingo, including funds derived from concessions. An exempt organization shall not contract with any person for the

purpose of conducting a bingo game. No person who shall have been convicted of a felony that was designed or intended to obtain or dispose of money or property through false pretenses, including fraud, embezzlement, theft, and racketeering, or who shall have been convicted of or pleaded nolo contendere to any illegal gambling activity or forfeited bond for not appearing while charged with any of these offenses may participate in the operation or conduct of the bingo activities of an exempt organization. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings ~~must~~ shall be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and ~~one-quarter percent (1 1/4%)~~ one-half percent (1 1/2%) of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is located (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game ~~must~~ shall be owned by the organization. Unless the exempt organization leases the property in accordance with this subsection, an exempt organization may conduct a bingo game only in or on property that is exempt from property taxes levied under Subchapter II of Chapter 105 of the General Statutes, or that is classified and not subject to any property taxes levied under Subchapter II of Chapter 105 of the General Statutes. ~~It shall be unlawful for any person to operate beach bingo games at a location which is being used by any licensed exempt organization for the purpose of conducting bingo games.~~

(d) Conduct of a bingo game or raffle under this Part on ~~such~~ that property shall not operate to defeat an exemption or classification under Subchapter II of Chapter 105 of the General Statutes.

(e) An exempt organization that wants to conduct only an annual or semiannual bingo game may apply to the Department of Human Resources for a limited occasion permit. The Department of Human Resources may require ~~such~~ any information ~~as~~ that is reasonable and necessary to determine that the bingo game is conducted in accordance with the provisions of this Part but may not require more information than previously specified in this section for application of a regular license. The application shall be made to the Department on prescribed forms at least 30 days prior to the scheduled date of the bingo game. The Department shall charge an application fee of one hundred dollars ($100.00) to defray the cost of issuing the permit, handling the bingo report, and regulating the operation of bingo games. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt organization shall file with the licensing agency and local law-enforcement a report on prescribed forms no later than 30 days following the conduct of the bingo game for which the permit was obtained. ~~Such~~ The report may require ~~such~~ any information ~~as~~ that is

reasonable and necessary to determine that the bingo game was conducted in accordance with the provisions of this Part but may not require more information than specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan its equipment or use of its premises to an exempt organization which has secured a limited occasion permit provided ~~such~~ that the arrangement is disclosed in the limited occasion permit application and is approved by the Department of Human Resources. An exempt organization conducting only an annual or semiannual bingo game under this subsection may not apply for a charity game ticket game license, conduct charity game ticket games, or sell or furnish charity game tickets in any manner at any time. Except as stated above, all provisions of this Part shall apply to any exempt organization operating a bingo game under this provision."

Section 4. G.S. 14-309.8 reads as rewritten:

"**§ 14-309.8. Limit on sessions.**

(a) The number of sessions of bingo conducted ~~or sponsored~~ by an exempt organization shall be limited to one session per week for those exempt organizations operating with a Class A bingo license and two sessions per week for those exempt organizations operating with a Class B bingo license and ~~such~~ these sessions ~~must~~ shall not exceed a period of ~~five~~ six hours each per session. No two sessions of bingo shall be held within a ~~48-hour~~ 15-hour period of time. No more than two sessions of bingo shall be operated or conducted in any one building, hall or structure during any one calendar week and if two sessions are held, they ~~must~~ shall be held by the same exempt organization. An exempt organization operating with a Class A bingo license may conduct a bingo session only on the day of the week and at the time of day selected by that exempt organization in its application for a Class A bingo license and listed on the face of the Class A bingo license issued by the Department. An exempt organization operating with a Class B bingo license may conduct bingo sessions only on one or more of the two days and at the time of day selected by that exempt organization in its application for a Class B bingo license and listed on the face of the Class B bingo license issued by the Department. Upon 10 days' prior notice to the Department of Human Resources, a licensed exempt organization holding either class of bingo license may conduct a session of bingo on a day other than that which appears on the face of the bingo license, provided that the conduct of the bingo session would not cause that exempt organization to exceed the session limits during any one calendar week set forth in this section for the class of bingo license held by that exempt organization or to violate any other provision of this Part. A separate notice shall be required by the Department of Human Resources for each session which will be conducted on a day other than that which appears on the face of the bingo license. ~~This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.~~

(b) Charity game ticket games shall be conducted during and in conjunction with a session of bingo and may only be conducted by the same exempt organization conducting the session of bingo and at the same location where the bingo session is being conducted. The number of sessions of bingo conducted by an exempt

organization at which charity game ticket games may be conducted shall be limited to one session per week for those exempt organizations operating with a Class A charity game ticket game license and two sessions per week for those exempt organizations operating with a Class B charity game ticket game license.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes."

Section 5. G.S. 14-309.9 reads as rewritten:

"**§ 14-309.9. Bingo and charity game ticket game prizes.**

(a) The maximum prize in cash or merchandise that may be offered or paid for any one game of ~~bingo~~ bingo, excluding a once-per-session jackpot bingo game, is five hundred dollars ($500.00). The maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session of bingo is ~~one thousand five hundred dollars ($1,500).~~ three thousand five hundred dollars ($3,500), excluding cash or merchandise that may be offered or paid for charity game tickets sold during the session in charity game ticket games. Prizes in cash or merchandise that may be offered or paid for a jackpot bingo game shall be excluded from this maximum aggregate amount. ~~Provided, however, that if an exempt organization holds only one session of bingo during a calendar week, the maximum aggregate amount of prizes, in cash and/or merchandise, that may be offered or paid at any one session is two thousand five hundred dollars ($2,500).~~

(b) Repealed by Session Laws 1983 (Regular Session 1984), c. 1107, s. 8.

(c) This section shall not apply to bingo games conducted at a fair or other exhibition conducted pursuant to Article 45 of Chapter 106 of the General Statutes.

(d) The maximum prize in cash or merchandise that may be offered or paid for any one charity game ticket is one hundred dollars ($100.00).

(e) The maximum prize in cash or merchandise that may be offered or paid for any one jackpot bingo game at any one session of bingo is two thousand five hundred dollars ($2,500). One jackpot bingo game may be held by a licensed exempt organization at each session of bingo. If a jackpot bingo game is not won and a prize is not awarded at a particular bingo session, the jackpot bingo game may be carried over to the next bingo session and increased in value, provided that the maximum prize in cash or merchandise that may be offered or paid never exceeds two thousand five hundred dollars ($2,500) at any one session of bingo."

Section 6. G.S. 14-309.10 reads as rewritten:

"**§ 14-309.10. Operation of ~~bingo.~~ bingo and charity game ticket games.**

The operation of bingo games and the sale of charity game ticket games shall be the direct responsibility of, and controlled by, a special committee selected by the governing body of the exempt organization in the manner provided by the rules of the exempt organization."

Section 7. G.S. 14-309.11 reads as rewritten:

"**§ 14-309.11. ~~Accounting~~ Accounting, enforcement, and use of proceeds.**

(a) All funds received in connection with a bingo game or charity game ticket game shall be placed in a separate bank account. No funds may be disbursed from this account except the exempt organization may expend proceeds for prizes,

advertising, utilities, and the purchase of supplies and equipment used in playing ~~bingo,~~ bingo and the sale of charity game ticket games, taxes and license fees related to bingo and the sale of charity game ticket games and the payment of compensation as authorized by G.S. 14-309.7(c) and for the purposes set forth below for the remaining proceeds. ~~Such~~ These payments shall be made by consecutively numbered checks. Any proceeds available in the account after payment of the above expenses shall inure to the exempt organization to be used for religious, charitable, civic, scientific, testing, public safety, literary, or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land or a building or improvements thereto owned by and for the exempt organization and used for civic purposes or made available by the exempt organization for use by the general public from time to time, or to foster amateur sports competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended for social functions for the members of the exempt organization.

(b) An audit of the account required by subsection (a) of this section shall be prepared annually for the period of January 1 through December 31 or otherwise as directed by the Department of Human Resources and shall be filed with the Department of Human Resources ~~and the local law enforcement agency~~ at a time directed by the Department of Human Resources. The audit shall be prepared on a form approved by the Department of Human Resources and shall include the following information:

(1) The number of bingo games conducted ~~or sponsored~~ by the exempt organization;
(2) The location and date at which each bingo game was conducted and the prize awarded;
(3) The gross receipts of each bingo game;
(4) The cost or amount of any prize given at each bingo game;
(5) The amount paid in prizes at each ~~session;~~ session of bingo;
(6) The net return to the exempt organization; and
(7) The disbursements from the separate account and the purpose of those disbursements, including the date of each transaction and the name and address of each payee.

(b1) The audit shall also contain, on a separate form approved by the Department of Human Resources, the following information:

(1) The serial number of each charity game ticket game;
(2) The gross receipts of each charity game ticket game;
(3) The amount paid in prizes at each charity game ticket game; and
(4) The net return to the exempt organization from each charity game ticket game.

(c) Any person who shall willfully furnish, supply, or otherwise give false information in any audit or statement filed pursuant to this section shall be guilty of a Class 2 misdemeanor.

(d) All books, papers, records and documents relevant to determining whether an organization has acted or is acting in compliance with this section shall be maintained

by an exempt organization for three years and shall be open to inspection by the law-enforcement agency or its designee, or the district attorney or his designee, or the Department of Human Resources at reasonable times and during reasonable hours. The Department of Human Resources, any district attorney or his designee, or the Attorney General, or any local law enforcement agency may conduct inspections of premises where bingo is conducted or bingo equipment and supplies or charity game tickets are stored and inspect the records of any registrant to ensure compliance with this section."

Section 8. G.S. 14-309.12 reads as rewritten:

"**§ 14-309.12. Violation is gambling.**

A bingo game or charity game ticket game conducted otherwise than in accordance with the provisions of this Part is 'gambling' within the meaning of G.S. 19-1 et seq., and proceedings against ~~such~~ that bingo game or charity game ticket game may be instituted as provided for in Chapter 19 of the General Statutes."

Section 9. G.S. 14-309.13 reads as rewritten:

"**§ 14-309.13. Public sessions.**

Any exempt organization operating a bingo game or charity game ticket game which is open to persons other than members of the exempt organization, their spouses, and their children shall make ~~such~~ that bingo game or charity game ticket game open to the general public."

Section 10. G.S. 14-309.14 is repealed.

Section 11. To implement the transition in regulating charitable bingo from the prior law to the statutes made effective by this act, the Department of Human Resources shall issue transitional rules providing for the conversion of the licenses issued under the prior applicable laws and the new licenses required by this act. The rules shall provide, inter alia:

(1) That exempt organizations licensed on the effective date of this act may immediately apply for new licenses that shall expire when the licenses held on the effective date of this act would have expired;

(2) For the staggered expiration of licenses issued pursuant to this act; and

(3) For prorated payment of the new fees required by this act based on the expiration date of the license held on the effective date of this act.

The Department of Human Resources shall develop and issue the rules prior to October 1, 1997.

Section 12. Sections 11 and 12 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997.

To whom it May Concern:

I wish to protest the possibility of closing Beach Bingo - It's my only source of enjoyment outside of my home - When I am depressed from taking care of my invalid mother - I can go to Beach Bingo - meet with my friends & then go home in a great frame of mind - ready to ~~battle~~ tackle another day.
I feel it will be an injustice to close Bingo.

Kay Neal
107 Huss Av
Cherryville, NC

I am a 25 year old female. I have enjoyed playing Beach Bingo & Charity Bingo for years. I still play beach bingo to this date. I can go & enjoy a night out with my friends or my family & not have to worry about being a victim of crime.

I go to Beach Bingo to relax, socialize, & just "kick back!" I work - so I deserve a night out! I love the way all of the people at my bingo parlor (where I play) know each other! We are like a family. We get together & play some bingo & hopefully win a little money.

Beach Bingo really doesn't cost as much as dinner for two & a movie for two. So, I can afford it! Please keep my beach bingo parlor open! I need an outlet from my daily routine & playing a little beach bingo is all I do besides work! Keep Beach Bingo operating in N.C. We need it!

Thank You,
Caroline S. Proctor
300 S. 4th. St.
Cherryvale, NC 28021

To Who it may Concern—

I will be 80 yr. old my Birthday and playing a little bingo is all the recreation I have to pass off time—

Sincerly
Lula Mae Willis
2609 Carl Ledford Rd.
Lawndale, N.C. 28090

I am an old lady, Who enjoys Bingo. If you stop Beach Bingo, I'll be alone again. I'm meet a lot of people my age & enjoy being with people. So please don't stop Beach Bingo.

Beedie Clippard
1875 Arrowood Lane.
Lincolnton, NC 28092
age 72.
Phone 735-3252.

To Whom It May Concern:

I am a 44 year old woman , who developed seizures three years ago. I enjoy playing BEACH BINGO in my hometown. It is not safe for me to go out of town because of my medical condition or the amount of crime elsewhere. If you stop Beach Bingo then myself and other people like me will have to stay at home by ourselves with nothing else to do. This is the only enjoyment that I have , I get to socialize with other people this way. It is hard being single and have to stay home alone. Please reconsider and let Beach Bingo remain in full operation. Thank You,

Pamela B. Murray

Pamela B. Murray
908 West Church St.
Cherryville, N. C. 28021
(704)435-8784

To whom it May Concern:

Thank you for allowing me to come here & voice ~~opinion~~ my side of this issue.

For starters I, myself, & the 100 plus signatures ~~(that I have)~~ that I am here to represent today are appalled by Charity Bingo trying to eliminate beach bingos. No, one charitable certain org. or group should be allowed to monopolize any part of a Bus. Market. That is illegal. Beach Bingo & to quote Ms. Brenda Brewer is not "Big Business," but rather ~~Bch~~ Beach Bingo is like a socializ. club.

My playis enjoy a couple nights of Beach bingo for a fraction of the cost from one might of Charitable bingo - from the pool of my own

players their #1 reason for not going to play charitable bingo is the cost. Beach Bingo operators do not set the prices for charitable bingos. The Charitable bingo operators do - Why should they want to eliminate Beach Bingos when all they would really have to do is lower their prices!!

My players also enjoy the smaller crowds of 35 to 45 people. They all know each other by name & we are somewhat like a family.

Bingo players have the right to freedom of choice as the law reads now - to change or eliminate their choice is unconstitutional. Freedom of choice is ~~a privilege~~ a right in the United States.

We, the operators of beach bingo do not deserve to be discriminated against - We pay our taxes & are law-abiding citizens. Please reconsider this bill. There are many steps that can be taken to regulate all bingos - Beach & Charity! To just eliminate a type of bingo that has been around since I was a small child is truly Un-American. Regulations need to be set to protect Charity Bingos from any unlawful Beach Bingo activity & Beach bingo surely needs to be protected from ~~Charity~~ Charity Bingos operating illegally.

We Beach Bingo's are small, but we mean a lot to our communities. We are small, but very important. Please reconsider

This discriminatory, unlawful bill that has been presented to you. We are an economic system that is based on free-enterprise. Please protect us Beach Bingos from being stamped out - We are small & few, but like I've already said we are very important to our players - in our communities - Save these players rights to freedom & choice by vetoing this bill!

Thank You!

Caroline S. Proctor
1889 Arrowood Lane
Lincolnton, NC 28092

Todd Daughtry Goldsboro, NC
Scott Chalbes 78-0098

Name Location

Good afternoon ladies + gentlemen. First of all, let me express my gratitude for the opportunity to voice the opinion of my colleques and myself. We hope that Senate Bill 893 does not become law because of the following reasons.

First, beach bingo is a form of recreation for many NC residents. The local bingo parlor is a place for citizens to congregate, socialize, relax, and mostly have fun. People who come to play bingo are representative of all NC taxpayers. Almost 70% of our players are 55 or order and many are very concerned. The local bingo offers these citizens entertainment in a clean, friendley, and alcohol-free atmosphere. ~~This law that beach bingo are not allowed to serve alcohol, and alcohol harms more NC residents than bingo ever will~~

Secondly, it should be noted that beach bingo operaters are subject to taxation like any other business. If the amount of taxes paid by beach bingo owners and employees was totaled, I'm sure that the committee would be impressed. All of these tax dollars are put to use for roads, schools, etc. Also Wayne Co. recieves support for local government efforts from our county

taxes, business license fees, and property tax. Also Wayne Co. charities such as the Eureaka Fire Dept, the Wayne Co. DARE Association, and the local chapter of the Fraternal Order of Police have recieved donations from my partners and myself.

Lastly, beach bingos in NC employ a substantial # of NC residents. Our business employees 2 high school students and 3 full-time employees. I think everyone would agree that teenagers working now provides a good work ethic in the years to come. If these places are closed, that would put a large # of people out of work, placing them on an already overdependent welfare system. Also my partners and myself would be out of a [redacted] business that we worked very hard to open. We also worked [redacted] at a beach bingo in Greenville while attending East Carolina University.

In conclusion, we hope Senate Bill 893 does not become law due to three main issues. Many taxpayers in NC find bingo an enjoyable atmosphere to socialize and relax in. Beach Bingo also offers job placement to many NC residents. Last, the taxes Beach

bingos pay the state are used by all people in N.C. And isn't this the most important aspect of all. Let the people of North Caroling decide what to do with their money, after all they decided who would represent them here in Raliegh.

**Testimony Before the Senate Judiciary Committee Public Hearing on Senate Bill 893- Charitable Bingo Regulations**

John Rustin, Director of Government Relations
North Carolina Family Policy Council
May 20, 1997

Thank you, Senator Cooper. My name is John Rustin and I work with the North Carolina Family Policy Council, a non-partisan, non-profit research and education organization which serves as the voice for families and traditional family values in the North Carolina public policy arena.

For many years, the North Carolina Family Policy Council has provided the legislature with information on the negative effects legalized gambling has on the states that allow it. For example, in 1994, the Center for Economic Development at the University of Massachusetts analyzed 14 studies conducted by the gambling industry itself and confirmed that legalized gambling siphons money out of the economy by encouraging people to spend money on gambling instead of on goods and services. The study also found that legalized gambling results in higher numbers of compulsive gamblers, higher incidents of crime, increases in child abuse and domestic violence, as well as increased cost to cover the social services needed to deal with these gambling-related problems.

Senate Bill 893-Charitable Bingo Regulations includes provisions to change a number of areas currently in the law regarding legalized gambling in our state. First, this bill would allow the use of "charitable game tickets" in conjunction with charitable bingo operations. These game tickets closely resemble lottery tickets and would be used in much the same way as a lottery. If passed, this provision would allow an additional avenue for legalized gambling in the state.

Second, while the bill would expand the regulation of charitable bingo operations, it would also expand the hours of operation and the maximum aggregate payout allowed in each bingo session. The maximum payout would increase from the current $1,500 to $3,500 not including "jackpot bingo" which allows a payout of $2,500 in one game. This brings the potential payout from $1,500 to at least $6,000. History shows that higher payouts result in higher participation in gambling.

Thirdly, SB 893 repeals current provisions in the law that allow the operation of "beach bingo." It is logical to expect the elimination of these legalized gambling operations would result in a reduced presence of gambling in North Carolina.

Senator Cooper, thank you for the opportunity to provide these observations on this issue. We hope this information has been helpful.

5-17-1997

Please do Not
stop Beach
Bingo.
Thank You Patricia Cook

5-18-97

To If May Concern:
Please do not cut off
Beach Bingo

Thank You
Shirley Gibson

Please Do Not Cut Out
BEACH BINGO

YVONNE PAYNE

Don't Cut Out My
Week-end Fun.

Peggy Lloyd

I play Beach Bingo because I can walk from my retirement home to play. Please don't stop.

Barbara Davies

Please don't cut out Beach Bingo

Hattie L. Zapalinsky

My daughter and I enjoy Beach Bingo very much. It is our hope that these Bingo's will stay open.

Martha Moss

Florence Johnson

Please do not cut out Beach Bingo

To Whom It May Concern:

It would be a great injustice to the tax paying citizens of North Carolina to have their right to play bingo revoked. Please leave Beach Bingo alone.

Thanks R Carmack
5/6-97

Would Our Legislators Please! Find Something else to Keep Us "Busy" Leave BINGO ALONE
Mrs Thurman
TAX Payer

Please Save Beach Bingo.
I am a Senior. If you Cut Beach Bingo I will have no place to go.
Josephine Washington

~~1111~~ 8 12 18 Lakeland St Durham nc 27701

I am one of your constituents. Please Do not vote to Discontinue Beach Bingo.

Signed Karen Lang
3712-F Meriwether
Durham, NC 27704
(919) 317-1019

Don't stop Beach Bingo

Essie Edwards
A BLACK TAX PAYER

Please Do Not Do
Away With Beach
Bingo
Its Enjoyable For
Old People to Play
Edna Green

Please Do Not Vote Out
Beach Bingo. Its my only
recreation.

Janice Brown

Gertrude P. Burnett
Do not Stop Beach Bingo.

Please do not stop beach bingo.

Kenneth Harris

Let us play Bingo

Dorthey Dudley

Please keep Beach Bingo Open.

Rebecca Adcock

Please don't close down Beach Bingo. Thankyou

Joyce Price

Please Do Not Stop
Beach Bingo

Maryland Harris

Pleasen Do not stop beach bingo
Penny Lopez

Pleasen Do NOT stop beach
"Bingo"

Please do not stop
Beach Bingo

Currin Brewington

Don't Stop my Sr. Citizen Outing.

Peggy Johnson

Margaret Hartman

Please don't Stop my Beach Bingo

Jean Mitchell

Do not cut out Beach Bingo

Jo Lewis Durham

Please Don't cut OUT
Beach Bingo
Thanks
Tony Pacchiel

Dont cut out
Beach Bingo
Linda Larcher

Please Don't cut out
Beach Bingo out
Thanks!
Hilda Pacchiel

Carol Strange

DO NOT Stop

Beach Bingo !!!

~~[illegible]~~

Please Don't Stop Beach Bingo

Joyce Thornton

PLEASE DON'T STOP my Beach

Bingo

Emily Berini

Please don't stop my Beach

Bingo

Glanya Vaughn

If you stop Beach Bingo what will U do on Friday nite.

Linda Jannell

Please dont stop Beach Bingo

Ines Beach

Please do not bither our Beach Bingo

Thank you much
Burleria Davis

Telephone no 471-8542

Please do not cut out Beach Bingo.

B. Berry
5/11/97

Don't stop Beach Bingo
Darlene Thomas

PLEASE DON'T STOP
BEACH BINGO
JAMES Gooch

Please don't stop Beach bingo. Please Please Please

Thank you
Bethelene Perry.

Don't Cut out
Beach Bingo!!
Nancy Evans

Please don't take away Beach Bingo

Thank You
Grace Davis

Myong H. Harris

We would like to keep our beach Bingo please its only family fun.

Thank You
Tanisha Tarrand

Please don't take away our Beach Bingo. We Citizen enjoy playing

Kathy Hoffine

5/6/97

Please do not stop Beach Bingo.

Thank-you

M. S. Pulley

Please do not Cut Out Beach Bingo

Ruby Middleton

Please do not Cut Out Beach Bingo

Emma McDaniel

Please Dont Do Away With Beach Bingo!

Michele Kreidler
3835 Guess Rd Apt 713
Durham, NC 27705
(919) 471-0890

Please don't close
BEACH BINGO
Down!

G. Freeman

Please don't stop
Beach Bingo

Bess Crumpler

Dear Sir:
Please don't cut out
Beach Bingo. I really
enjoy playing it. Thank you.

Alberta J. Toney

Please do not cut out
Beach Bingo

Delores Hester

Please do not shut down Mark Bingo

Gladys Potter

Please Freek Beach Bingo we Enjoy Playing at.

Rhonda Mosher

Hattie P. Mebane
Do not Stop Beach Bingo.

Please Do Not stop Beach Bingo JEAN CAMMACK

Please Don't Cut-Out
Beach Bingo!!!
Lorna Ryan

Don't Cut-Out
Beach Bingo!!!
Michelle Dunn..

5/6/97
Please do not stop
Beach Bingo.
Thank-you.
Cheap Pilley

Please do not Close beach bingo,
please it is good for old and
young.
Mary Thompson

Please Don't Cut-Out
Beach Bingo !!!
Rosetta Johnson

Please don't stop up Beach Bingo, I am retirie and I enjoy playing Thank you

Mrs. Jo Lewis
2332 Glendale ave
Durham, N.C.

Please don't Cut Out
Beach Bingo
Caroline Bell

THURSDAY, MAY 15, 1997 SERVING CALDWELL COUNTY, N.C. SINCE 1875 NUMBER 202/ 50¢ Newsstand

# Bingo owner opposing bill

**■ Cecil Graves says charity games are lobbying for a law to ban beach bingo.**

By DAVE CRUZ
*Staff Writer*

LENOIR — In a conservative state where open gambling is barely tolerated, a Lenoir beach bingo parlor owner has discovered a new threat to his livelyhood, charity bingo.

Cecil Graves, 38, of Lenoir, who along with his wife Pat own Pat's Beach Bingo in the Whitnel section of the city, said he is upset about a bill in the General Assembly that would eliminate beach (non-charity) bingo and tighten requirements for charity bingo games.

But what has Graves the most concerned is that the bill has the support of a charity bingo lobbying group.

Last week, Brenda Brewer, president of the N.C. Association for Charity Bingo, spoke to the Senate Judiciary Committee in support of the bill and claiming the spread of small pot beach bingo parlors in the state is hurting its business.

Graves said that is not true.

"When one of those buildings (charity bingos) are occupied we have no business at all," Graves said.

Currently, the state limits beach bingo jackpots to $10 per game. Charity bingos can pay $2,500 in prize money during a one-night, four-hour period per week.

"Somebody that wants to play bingo would go to place where they could win the most money," Graves said.

The Associated Press reported that Brewer told the senators that "beach bingo is big business and it is running charity bingo out of business."

Graves said the statement couldn't be further from the truth.

**BINGO** *continues on next page*

GREGG FLOYD/NEWS-TOPIC

Bingo parlors like this one in Whitnel may be threatened by proposed state legislation.

## BINGO

**Continued from page 1**

He said charity bingo is highly profitable, big business and that only 35 percent of the profits are required to go to a sponsoring charity. Charity bingos can take in huge profits during the four hours a week they're legally allowed to operate.

"I'd be tickled to death to make half that in profits for one week," he said.

Graves said he is attempting to organize other beach bingo operators and beach bingo players in opposition to the bill and is circulating a petition.

Graves said he and his wife have every penny they have ever made in their lives tied up their business. In his petition, Graves states " ... it not right to single out one business and say get out; you lose everything. Please sign this petition to help protect beach bingo, small business and protect your rights to free enterprise.

When it comes to the question of gambling, bingo player Arnold Bryant, 66, of Hudson said beach bingo is the lesser of the two evils when compared to charity bingo.

"This is the type of bingo where retired people can enjoy themselves. They don't spend a whole lot of money and they can't win a whole lot of money," Bryant said. "It's more like a hobby than gambling. It's a fun game. Charity bingo is more like gambling. You're playing for big money, and you're spending more money."

Bryant said he doesn't see beach bingo as being a threat to charity bingo.

Frances Shehan, 71, plays bingo about five nights a week. She said she spends about $15 a night playing Pat's Beach Bingo and wins a lot there. She said at the big charity games she'll spend about $35 a night.

"I come out pretty good here," Shehan said of the beach bingo.

She also opposes the proposed bill that would ban beach bingo.

"If they closed our bingo I wouldn't have nothing to do," Shehan said. "I can't see why they would want to close it down. Us elderly, all we've go to do is play bingo."

Graves said he and his wife pay their city business license fees and pay state and federal income taxes on their profits and personal salaries. He said it is unfair to have beach bingo eliminated from competing for the public's bingo dollar through legislation.

"It seems like it should be unconstitutional for them to target a business and shut them down," he said.

Graves said it will take an organized effort to defeat this proposed legislation and wants to present his petition in Raleigh next week. He is inviting all beach bingo operators to contact him.

His home phone number is 754-3755. His number at the parlor is 757-2884.

4/2

# AP News Briefs

## Bill Would Eliminate 'Beach Bingo'

RALEIGH — Bingo games in North Carolina are supposed to raise money only for charities, but the charities say the spread of small-pot "beach bingo" parlors is hurting their games.

Beach bingo "is big business and it is running charity bingo out of business," Brenda Brewer, president of the N.C. Association for Charity Bingo, told a Senate committee Thursday.

She spoke before the Senate Judiciary Committee in support of a bill that would eliminate beach bingo and tighten the requirements for charity bingo games.

State law allows charity bingo events to be held at limited times and with limited prizes. A prescribed percentage of the profits must go to the sponsoring charity. Beach bingo, which has much larger jackpots, can operate throughout the week.

This Petition is To Protect All

Beach BinGO'S,

FROM The ABOVE Bill,
IF This IS VOTED FOR
IT Will Eliminate Them all Together

IT is NOT RighT To Single OUT
one BuSiness And SAY GET OUT,
You LoSe EVery Thing!!

Please SiGN This Petition
To Help PROTecT Beach BinGO,
SMALL Business, AND Your RighT'S
TO FREE ENTERPRISE

1 Nadia Le Mitchell
2 Ashley Runyan
3 Jim Bolich
4 Tora Green
5 Faye Whisenant
6 Dave B Collins
7 Grant M. Spicer
8 Mary Phillips
9 Phyllis Denney
10 Georgia Ellis
11 Chris Keener
12 Beverly Chandler
13 Josh Chandler
14 Lorie Seagle
15 Mike Moore
16 Connie Moore
17 Alicia Parrish
18 Doris Hutt
19 Marsha Clawson
20 Faye Murray
21 Kathey Burns
22 Karen Hart
23 Kelli Bauer
24 Jeremy Hensley
25 Denver Hensley
26 Kacey Kelley

Nina Clark
Juanita Pritchard
Marjorie McKinney
Melissa Jones
Barbara Barnett
Teresa Thompson
Nancy Davis
Nancy Burbine
Carmella Overstreet
Linda Doyle
Dawn Emerson
Taylor Emerson
Mike Emerson
David Branch
Terri Holtsclaw
Shelli Holtsclaw

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| | |
|---|---|
| Sarah Pettegrew | 206 Poplar St Morganton NC |
| Janey Jugar | Morganton N.C. |
| Iris L Harris | Morganton N.C |
| Vernon Harris | Morganton N.C |
| Pauline Franklin | Morganton N.C. |
| Diana Heerter | Drexel N.C. |
| Rose Marie Farinella | Drexel NC. |
| David Hoyt Harben | Morganton N.C. |
| [illegible] | morganton NC |
| [illegible] | Morganton NC |
| Lois A. Smith | Connelly Springs NC |
| Eleanor Reid | Clayton Pennington |
| Joyce Wong | |
| Shirley Hayes | |
| Tessie Smith | |
| Lois Foster | morganton N.C. |
| Jay Kenny | Morganton N.C. |
| Carol Angie | Morganton N.C. |
| Geneva Fairchild | Morganton, NC |
| Linda Pickens | Morganton |
| James Stepney | Morganton, N.C. |
| Bobbie Teeter | Morganton N.C. |

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1 Pat Jones
2 Paul Jones
3 [illegible] Long
4 Hawk Sempter
5 [illegible]
6 Janice L Greene
7 Wanda Taylor
8 Barbara Shirey
9 Linda Hyslop
10 Bertie Braswell
11 Billy Braswell
12 H Braswell
13 Chrissy Oliver
14 Randy Bentley
15 Peggy Clonch
16 Linda Lackey
17 Brian Hartley
18 Tommy Hood
19 Shannon Wright
20 Jessica Byrd
21 Kristy Newsome
22 Brandon Newsome

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TO FREE ENTERPRIZE

1. Shannon Wilson - 1520 Berkley St. Apt. A-2
2. Tracy Hucks - Rt. 10 Box 866 Lenoir, N.C. 28645
3. Jennifer Cannon
4. Ronnie Church

(5) Rub[illegible]
(6) Tasha Moss 134 Countryside Drive Lenoir NC 28645
(7) Francis [redacted] Coffey
Rt. 1. Box 463
Lenoir, N. C. 28645
(8) Michelle Groover
2636 Clarks Chapel Rd
Lenoir, NC 28645
(9) Brad Wolser
2634 Clarks Chapel Rd
Lenoir, NC 28645
(10) Tammy Lovett
Rt 2 Box 254-3
Taylorsville, NC 28681
(11) Ann Philyaw
Box 306 Hwy 90
Lenoir, NC 28645
12. Jerry Coffey
Rt. 1. Box 463
Lenoir, N.C. 28645
13 Trudy Smithey
108 Spencer Hights
Lenoir, N.C. 28645
14. Lorie Smithey
108 Spencer Hights
Lenoir, N.C. 28645
15. Cecilia Jenkins
108 Spencer Heights
Lenoir, N.C 28645
16. Priscilla Bentley
3879 Persimmon Hill Pl.
Granite Falls, NC 28630

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1 Jennifer Deeman 758-4992
2 Connie Spears 757-3049
3 Annette Shaffner 2241 Watson Rd Lenoir.
4 [illegible]
5 [illegible] 757-0251
6 [illegible] 757-0073
7 Shane Coffey PO Box 2196 Lenoir
8. Barbara Middleton 757-3196
9. Daniel King 113 Highland Way Apt 3A Lenoir 754-0289
10. Dail Arnold Morganton Blvd Lenoir
11. Mary Perley
12 Deborah Marshall- Rt 6 - Lenoir
13. Tony Marshall- Rt. 6- Lenoir
14 Todd Hollar Rt 11 Box 116 Lenoir
15. Christina Dellinger 1227 Honey Comb PL
16 Mark Walker
17 Tony Triplett
18 [illegible]
19 Casey Moss
20 Clarance & Dellinger 1227 Honey Comb PL
21 Shannon [illegible]
22. Bonnie Kirby
23 [illegible]
24 Carolyn Perley
25 Cliff Blair
26 Cindy Davis
27 Ralph Thorne
28 Stephanie Thorne
29 [illegible]
[illegible]

31 Thomas McCarthy
32
33 Duane Moore
34 Douglas Ford
35 Hilda Warren
36 Boyce Mann
37 Roy McCarty
38 Roger L Kesecker
39 Michael Clark
40 Kaatie Wall
41
42 Robert Dent
43 Maxine Pearson
44 Shannon
45
46 Jerry Rein Lenoir
47 Ralph Crump Lenoir
48 Melissa Moore Lenoir
49 Rodney West
50 Lee Stallings
51 Karen Green
52 Wanda Chester 1 Celia Creek Rd. Lenoir, NC.
53 Lee Bradshaw
54 Tanya McSwain
55 Stella Widen
56
57 Cathy Braden
58 Sharon Powell
59 Paige Johnson
60 Debby Brown
61
62 Robert Epps

43
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65
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67 Kenny L. Saunders
68 David Hatley
69 Ricky Conner
70 Eric Rhilyn
71 Betty Lyons
72 Jeff W. Wilson
73 Lewis George
74 Paul Lord
75 Harry Lund
76 Joe Debski
77 Billy Willis
78 Blake Willis
79 Dale Conty
80 Barbara Regan
81 Kris Adams
82 David Berg
83
84 Tim Owens
85 Yvonne Comer
86 Sharon M. Wilson
87 G. Spencer Shaw
88 Tara French
89
90 Joseph Hatley
91 Bill Norton
92 WALTER MELOW
93 James Copeland
94 Billy Kelly

95 Thomas Watson
96 [illegible]
97 Stephanie Drago
98 [illegible]
99 [illegible]
100 [illegible]
101 Mildred Chute
102 Bob Delay
103 Edris Cate
104 Jill Lee
105 Howard Crouch
106 Barbara J Hull
107 Ben Horn
108 Anthony Bailey
109 [illegible]
110 Jerry Beth, Jr.
111 Sherry Puett
112 Dale Sutton
113 Gary Hicks
114 Helen Jenkins
115 Kenny Clark
116 Lisa Clark
117 [illegible]
118 Gary Pennington
119 Dana Coffey
120 [illegible]
121 Wayne Browning
122 [illegible]
123 [illegible]
124 Roger Williams

125 Bill Johnson - Lenoir N.C.
126 Bill Blevins - Lenoir, N.C.
127 Penny Mansion Lenoir, N.C.
128 Harry Snapp Lenoir, N.C.
129. [illegible] Lenoir, N.C.
130 [illegible]
131 Dannie Megee marrion
132 Danny Swanson Lenoir NC
133 Mary Anne Lenoir N.C.
134 Clarence Dalton RFD Box 400 Lenoir
135 Carroll Watts Lenoir N.C.
136 Chris Mundy Connelly Springs N.C.
137 Ruth Bentley Colletsville, NC.
138 Jerry Lipps R1 C Box 359A Lenoir NC.
139
140 Sherry Jones, 2085-7 Deed Rd. apt 7
141 Barbara Klopish Hampton Hts. Lenoir, NC
142 Mike Mahoney 149 SLEEPY HOLLOW LENOIR NC, 28645
143 Tommy Nave 2105 Lot 15 F.R. Coffey Rd Morganton NC 28655
144 Johnnie H. Gray R # Box 80 Lenoir N.C.
145 TRIPLETON D. CORNPONE, RT 7 Bx 785 DOGPATCH, KY.
146 Rhonda Haney RT 11 Box 915 H Lenoir NC
147 Shelby Cain 280 HAGLAND RD Lenoir
148 Barry Gomps 4150 Duggin MHP #25
149 Robert [illegible] RT 11 Box 63 Lenoir NC 28645
150 Michael Clark Rt. 11 Box 367-E Lenoir
151 [illegible] 2890 Morganton Hwy Lenoir
152 Debbie Watson 4690 Celicia Creek Rd Lenoir
153 Barbara Honeycutt RT 6 Box 320 Lenoir
154 Lynn Greene RT 11 Box 164 Lenoir
155 Maranda Eldreth Rt. 7 Box 508 Lenoir
156 Joyce Caldwell 3208 Deep Rt Rd Lenoir

| | Name | Address |
|---|---|---|
| 157 | [illegible] | [illegible] |
| 158 | Angela M. Caldwell | P.O. Box 533 / Lenoir |
| 159 | Angie Lackett | P.O. Box 5331 Lenoir NC 28645 |
| 160 | Anthony Lackett | P.O. Box 5331 Lenoir NC 28645 |
| 161 | William Hamer | 113 Hickory St Lenoir NC 28645 |
| 162 | David Lackett | 107 Highland Way Lenoir NC 28645 |
| 163 | Kathy Coleman | 2431 Brogan Dr. Lenoir NC 28645 |
| 164 | Cliff Crowley Jr. | 111 Birchdale Dr. Lenoir NC 28645 |
| 165 | Clare Sechler | Rt 11 Box 338-E Lenoir NC 28645 |
| 166 | Chuck Mock | Rt 7 Box 495 Lenoir NC 28645 |
| 167 | Jerry West | 2540-C Racetrack St, Morganton, NC 28655 |
| 168 | James Edmisten | Rt. 1, Box 582 Lenoir NC 28645 |
| 169 | Allen White | 533 Corn Rd Lenoir NC 28645 |
| 170 | Christina Cobbley | Rt 11 Box 226-B Lenoir NC 28645 |
| 171 | [illegible] | 250 Hwy 18 N Lenoir N.C. 28645 |
| 172 | Vance Mcall | Rt. 7. Box 607. Lenoir. |
| 173 | J. L. Thomson | 104 Holmes Circle Lenoir N.C. |
| 174 | Jerri Hall | Rt. 11 Box 116 Lenoir N.C. |
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Please SiGN This Petition To Help PROTecT Beach BinGO, SMaLL BuSiness, AND Your RighT's TO FREE ENTERPRIZE

1. Bertha Griffin 501 Swanson Rd Lenoir NC., 28645
2. Dixie R. McMichael P.O Box 5556 LENOIR N.C. 28645
Julia Orren P.O. Box # 197 Hudson NC.
Ray Wilson
Lida Martenat 239 Sharon ave N.W. Lenoir NC
Jim Lubbelly 929 E I S T, Hwy NC
Zeb Church PO Box 62 Pattersons
Melody Hayden 314 Horton Dr. S.W. Lenoir NC 28645
Gary Carroll 2455 Cedar Rock Circle Lenoir NC.
Jeff Wallace
3 Jeff. Cannon 516 Hibriten Dr. S.W. Lenoir
Jennifer Gallon
4 Lonnie Huff Rt 2 Box 611 Lenoir NC.
5 Gary Carroll 4551 Horseshoe Bend Rd. Hudson, N.C.
6 Joseph A Cole 2369 Keith Ave. Granite Falls N.C.
7 Terry Coffey 103-A Hollins Circle Lenoir
8 Trisha Griffin 423 Legion Rd. Hudson N.C.
9 Gabriele Clark 2687 Clarks Chapel Rd
10 Rolande Lair 864 Dudly Shoals Rd
11 Jeanette Hale 3143 Clarks Chapel Rd.
12 Joe Phillips 1107 Ashworth Hill Rd.
13 Kathie Bergel 1809 Abington Rd.
14 Renee Kincaid 638 Meadowwood St Hudson NC

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① - Delilah Anderson - 2448 mt Herman Hgts Hudson NC 28638
Donna Greer 2441 Mt. Herman Hgts. Hudson, N.C. 28638
Andrea Page 3596 Gull Street Hudson NC 28638
Delilah Anderson 2448 mt Herman Hgts Hudson NC 28638
Ruth Greer 501 Woodhaven St. Lenoir, N.C. 28645
Tom Stokes 411 Melrose St. Lenoir N.C. 28645
Gary Hamby 2341 Indian Grave Rd Lenoir N.C. 28645
Ronnie Cox 2017 Norwood St SW Apt 411 Lenoir NC 28645
Tommy Dunn 717 Pine Mt Rd Hudson NC 28639
Bill Lail 2626 Hogan Dr. Lenoir N.C. 28645
Buffy Carson 2205 Rolling Hills Ct. Lenoir, NC 28645.
Claude T Huff 444 RURAL DR
Granite Falls, NC 28630
Barry Pritchard RT Lenoir
Lisa Triplett - 2455 Mt. Herman Hts. Hudson, N.C. 28638
Gus Stamey - MT. Herman Hts, Hudson, N.C. 28638
Sue Crouch 521 Dudley Rd Granite Falls NC
Jeff Carter 603 Jason Place Lenoir 28645
James M. Pack 1711 Poplar ST. LENOIR 28645
James Warren 1435 Baton School Rd. Granite Falls, N.C.
Jim Honey RT-7 BOX 450 LENOIR
James Hyms 2422 Enna St SW LENOIR NC
Byron Meekins 538 Hill St Lenoir N.C. 28645

Melvine Lee 1 Circle St. Apt #8 Granite Falls.

Jerry Burch 1 Circle St. Apt #5 Granite Falls N.C.

Mary Buckner P.O. Box 292 Granite Falls N.C.

Michael Waller Edsel Circle Duggins Hudson M.H.P.

Jim Michaels 1024 Beech St. Granite Falls N.C.

Jeff Carter Rt. 1 606 Lenoir NC 28645

Debra Blair PO Box 2972 Lenoir NC 28645

Shane T Clark 1292 Chariot Dr Hudson

Nathan Any 8 W. Summit Ave Granite Falls NC 28630

Ray Hambrick 430 Tywood St Lenoir NC 28645

Robin Coffey 1008 perkins Pl. Lenoir NC 28645

Pam Hughes 3396 Freeman Lane Lenoir NC 28645

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1. Brandy Z Hoffman
503 Swanson Rd
Lenoir NC 28654

2. Becky Nelson
P.O 2837 Lenoir NC

3. Doris Warren
212 Prospect St
Lenoir N.C.

4. Bill Nelson
184 East St C-12-3
Hudson N.C.

Virginia Davis
905 Dogwood Vista
Lenoir N.C. 28645

5. Diane Robbins
1208 OAKLAWN St. SE
Lenoir, N.C. 28645

6. Mrs. Margaret Bryant
3710 Wade Thompson Lane
Hudson N.C. 28638

7. Arnold Bryant
3710 Wade Thompson Ln
Hudson N.C. 28638

Kevin Coffey
Rt. 1. Box 466 D
Lenoir, N.C. 28645

Jean B Coffey
Rt. 1. Box 466 E
Lenoir, N.C. 28645

Billy D. Coffey
Rt. 1 Box 479
Lenoir, N.C. 28645

Violet Price
1414 Edwood dr.
Lenoir, NC 28645

Jennifer Brown
Rt. 1. Box 466 E
Lenoir, N.C. 28645

Johnny Price
414 Edwood
Lenoir N.C. 28645

14. Kitty Sennell 112B Plymouth Rd Lenoir, N.C.
15. Dustin Winkler 2124 Union Gr. Rd. Lenoir, N.C.
16. Louise Hardy 1019 Cypress Dr. Apt. E
Reidsville, N.C. 27320
17. Madlene Somers 1202 Dunn St. Apt. 5D
Reidsville, N.C. 27320
18 Lois Snyder
POBOX 2028 Lenoir, NC 28645
19 Melissa Snyder
POBOX 2028 Lenoir, NC 28645
20 Idelma Findlay
~~472~~ B 1473 Lee Pearson Rd Granite Falls 28630

21 Melody Truesdale
357 Laurel St. Hudson N.C. 28638
22 Phyllis Keller
~~2~~ 4180 Beach Rd. Hudson, N.C. 28638
23 Gail Settlemyre
C-14-A-6 Hudson NC. 28638
24 Margaret Coffey 6320 Hwy 321 Blowing Rock NC 28605
25 Dan Storie 210 Westfield Ct. Lenoir N.C. 28645
26. Frances Shehan 1048 Stagecoach Ln. Lenoir N.C. 28645
27 Dawn Morrow 1376 Gumberry Pl. Granite Falls NC 28630
28 Lynette Bedwell 1376 Gumberry Pl. Granite Falls NC 28630

Name & Address

29 Loene Lowe 24 Pine St C falls
30 Edith Hedrick PO Box 406 Rhodhiss, NC
31 Mitch Smith Lenoir NC
32 Betty Triplett 1943 Blowing Rock Rd Boone NC
33 Wanda Mynear Boone NC.
34 Shirley Wallace Boone 27
35 Karen Watson Lenoir N.C.
Hazel Murphy Lenoir N.C.
36 Luther Billings Lenoir N.C
37 Alicia Billings Lenoir N.C.
38 Stacey Teague
Rt. 1. Box 466
Lenoir NC
39. Vergie Teague
Rt. Box 466
Lenoir N.C.
40 Amy Fenny
Rt. P. Box 466 C
Lenoir NC
41. Michal Fenny
Rt. 1, Box 466C
Lenoir NC.
42 Johnathan Teague
Rt. 1. Box 466 D
Lenoir NC 28645

43. Sonia Teague
Rt. 1. Box 466D
Lenoir, N.C. 28645

44. Mike Coffey
Rt. 1. Box 465B.
Lenoir, N C.

45. Betty Coffey
Rt. 1, Box 465B.
Lenoir, N.C. 28645

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1. Wallace Cunningham 135 Shamrock Circle C-13-2 Hudson, NC 28630
2. Carolyn Cunningham 135 Shamrock Circle C-13-2 Hudson, NC 28630
3. Jean Correll 321 Renwick St. S.W. Lenoir, N.C. 28645
4. James A Correll 304 Lutz St SW Lenoir NC 28645
5. Christina Correll 304 Lutz St. SW Lenoir, NC 28645
6. Russell Cornwell 321 Renwick St. S.W, Lenoir, N.C. 28645
LORI BLEVINS 2330 ALFRED HARTLEY RD. LENOIR, NC 28645
7. Sonia Triplett 215 Rosedale Dr. Lenoir, NC 28645
8. TOM Hanks 317 ~~East~~ Hollywood CA, 98345
9. Robin Bryant 693-A Lenoir N.C. 28645
10. Greg Bryant 693-A Lenoir NC 28645
11. Angela Winkler 110 Hospital Ave NW Lenoir NC, 28645
12. Peggy Bryant 693 A Lenoir N.C. 28645
13. Tim T. Correll 717 Jason Place NC 28645
14. Kevin Winkler - 110 Hospital Ave N.W. Lenoir, N.C. 28645
15. Virginia Propst 2515 Pl - Morganton NC 28645
16. Bob Blevins - 2330 Alfred Hartley Rd. Lenoir, NC. 28645
17. Wyoming Anderson P.O. BX 952 Lenoir, NC
18. Darryll J Reece 2061 Shook Place Lenoir, N.C.
19. Felicity Smithey Rt. 1. Box 466 D. Lenoir, N.C.
20. Stacie Rhymer 2061 Shook Place Lenoir, N.C.
21. Cassi Reece 2061 Shook Place Lenoir, N.C.
22. Johnny Reece 2061 Shook Place Lenoir, N.C.
23. TANYA CRAWLEY 1928 CHAPARRAL CT. LENOIR, N.C. 28645

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1. Carol W Greene
2. Ruby Smith

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1 J.P. Sudduth 704-754-6565
2 408 Norway circle Lenoir NC 28645
3 Amy Philyaw 1112 Brockmore Dr. Lenoir, N.C. 28645
4 Lephanese Kincaid 317 Gingercake Ct. Lenoir, NC 28645
5 max D. Taylor
6 Jimmy D. Scott - Lenoir
7 Gita Hall 728-2828
8 Deborah Best Hudson N.C.

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Betty J. Moretz
Roberta Danner
Lonnie Swanson
Lori Swanson
Misty Swanson
Dorothy Wayne
Homer Wayne
Lisa Wilson
Ronnie Wilson
EMMA Wilson
Scott Cannon
Barb Cannon
Gary Wilson
Maxie Sones
Susie Barnes
Ronnie Barnes
Roy Moretz.
Teresa JACKSON
JOHN JACKSON
Orozella Jackson
Deryl Danner
Jo Danner
Cathie Shines
George Danner
Betty Triplett
Katrine Skalleberg

26 Jennifer & S. Skalleberg
27 Shirley Wallace

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1 Thomas D Clark
2 Rachel Clark
3 Helen Davies
4 Linda Tugman
5 Barbara Lowman
6 Nancy Barnes
7 Flossie Norwood
8 Pamela Hodge
9 Elston C Moretz Jr.
10 Paul Swann
11 William Bawling
12 Dot Smith
13 Bill Murray
14 Marian Clawson
15 Doris Heitt
16 NANCY McNEILL
17 TED McNEILL
18 Tony Hamilton
19 Mabel Rebol
20 Ruth Copelette
21 Peg Nelson
22 Betsy Smith
23 Mildred Berry
24 Mary Bradley
25 Mike Clawson

26 Marcia Winkler
27 Mary Lesty
28 Ken McNeil
29 Theresa McNeil
30 Sue Beam
31 Donna Biles
32 Kerby Bracon
33 Grace Corbett
34 Kitty Craig
35 Sopra Brown
36 Beth Daley
37 Becky Day
38 Ed Day
39 Joyce Hart
40 Ollie Huff

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2 Dot Johnson
3 Betty Pennell
4 Mike Coffey
5 Bessie Johnson
6 Judy Dull

7

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1) Sylvia L. Garrison
P.O. Box 3275
Lenoir, N.C. 28645

2 Norma Jenkins
P.O Box 630
Blowing Rock NC 28605

3 Irene Caron
2730. 39th ave N.E
Hickory, N.C. 28601

4 Ruth Lipps
2730 39th Ave N.E
Hickory, N.C. 28601

5 Lisa S. Arnold
926 Meadowood Dr.
6 Lenoir NC 28645

7 Darrell Arnold
926 MEADOWOOD DR.
LENOIR, N.C. 28645

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1 Peggy Clonch
2 Jo Gallmen Day
3 Nelson Cloud
4 Iris L Harris
5 Charles V Harris
6 Brenda Phillips
7 Don Phillips
8 Ellen Bedore
9 Bob Bedore
10 Betty Simmons
11 Tommy Simmons
12 Glenda Scroggs
13 Michele Garrett
14 Valerye Woodie

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Please SiGN This Petition To Help PROTecT Beach BinGO, SMaLL BuSiness, AND Your RighT'S TO FREE ENTERPRISE

1 Louise Baker
2 Kathy Miller-1503 Barcase Street Apt B. Lenoir
3 Rochelle Burris-211 Spainhour Ap 5# Lenior
4 Mary M. LeFevers 1101 Laurelwood Pl Lenoir NC. 28645
5 Sheila A. Austin 1203 Windsor Ave. S.W. 28645
6 James M. Norwood Lenoir N.C.
7 Mary P. Trocuette BOONE N.C.
8 Edythe Pauli Boone, N.C.
9 Wanda McNeal Boone NC.
Judy Pruitt Lenoir N.C. 10
Ray Bragg Lenoir, N.C. 11
Betty Braswell Lenoir N.C. 12
Kenneth Sipes Lenoir 13
Chris Lenoir N.C. 14
Tom Miller Wilkesboro N.C 15
Maggie Johnson N. Wilkesboro, N.C. 16
Joy P Hood Lenoir NC., P.O. Box 212 17
Ann R. Staver P.O. Box 991 Lenoir, N.C. 28645 18
Michael Goodling 407 East St Lenoir, 28645 19
Shannon Newton Rt. 8 Box 388 Lenoir, 28645 20
Kenneth Rayle Rt 4 Box 949 Hudson N 21
Louise Royal

Jeremy Griffin Senior M. C 21

# AP News Briefs

## Bill Would Eliminate 'Beach Bingo'

RALEIGH — Bingo games in North Carolina are supposed to raise money only for charities, but the charities say the spread of small-pot "beach bingo" parlors is hurting their games.

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Please SiGN This Petition To Help PROTecT Beach BinGO, SMALL BuSiness, AND Your RighT's TO FREE ENTERPRIZE

1. Myrna Poarch
3805 Johnny Poarch Rd
Lenoir N.C 28645

2. Debbie McCroskey
1052 Stagecoach Trail
Lenoir, N.C. 28645

3. Betty Lipps
3982 Smokey Creek Rd
Lenoir N.C. 28645

(4) Judy Rector
289.0 Morganton Blvd. #2
Lenoir NC 28645

5. Marg Walker
5905 Hollow Springs Cr.
Boomer, N.C. 28606

6. CHRISTINA OLIVER
RT. 11 BOX 26-6
LENOIR, NC 28645

7. LINDA OLIVER
107 WILLOW ST.
LENOIR, NC 28645

8. GARY OLIVER
107 WILLOW ST.
LENOIR, NC 28645

9. RANDY BENTLEY
RT. 11 BOX 26-6
LENOIR, NC 28645

10. Katie Stamper
136 Old Bare Rd
Boomer NC 28606

11. Eric Stamper
136 Old Bare Rd
Boomer NC 28606

12. Sarah Tart
902 Elk Creek Darby Rd
Ferguson NC 28624

13. Phoebe Roten
904 Elk Creek Darby Rd
Ferguson NC 28624

14. Janice McNeil
906 Elk Creek Darby Rd
Ferguson NC 28624

15. Davy Walsh
906 Elk Creek Darby Rd
Ferguson NC 28624

16. Sonny Barlowe
2361 Rainbow Hghts. Cr.
Lenoir N.C. 28645

17. Daniel McGee
2361 Rainbow Hghts. Cr.
Lenoir N.C. 28645

18. James Mc Gee
2361 Rainbow Hghts. Cr.
Lenoir N.C. 28645

19. Julie Pollard
2207 Clyvis Pl
Lenoir, NC 28645

20. Kate Walsh
902 Elk Creek Darby Rd.
Ferguson N.C. 28624

21. David Walsh Sr.
902 Elk Creek Darby Rd.
Ferguson N.C. 28624

22. Sarah Walsh

23. Delia Hamby
Rt 1 Box 219
Ferguson N.C. 28624

24. Chris Minton
906 Elk Creek Darby Rd.
Ferguson N.C. 28624

25. Pat Hedrick
2495 Race track St.
Morganton, N.C 28655

26. Earl Hedrick
2495 Race track St
morganton N.C 28655

27 Debbie & Doug Jackson
1990 Waverly Way
Lenoir N.C.
28645
2 704-726-1181

28. Lillian L Bucker
711 Harrisburg Dr
Lenoir, NC 28645
704-754-9693

29. Linda Oliver
107 Willow St.
Lenoir, NC 28645
704-754-0549

30. Evelyn Curtis
209 Ridgeway Pl. S.W.
Lenoir N.C. 28645

1. SANDRA G. SUDDOTH
3204 SMOKEY LANE
LENOIR, NC
28645

Shirley Spears
875 Shasta Ln.
Lenoir N.C. 28645

33. Charlene Mullins
2408 Greenway St
Lenoir N.C. 28645

34. Sylvia Bates
2600-13 Dixie Way
Hudson, NC 28638

35. L.M. Hartley
961 Connelly Springs Rd,
Lenoir NC 28645

36. John Ricks
P.O. Box 1897
Lenoir, N.C. 28645

37. Melissa Greene
P.O. Box 1897
Lenoir, N.C. 28645

38. John Crutchfield
Rt 8 Box 207A
Lenoir NC

39. Frankie Stamper
1104 Walshtown Rd
Boomer NC 28606

40. Marvin Stamper
1104 Walshtown Rd
Boomer NC 28606

41. Jonathon Stamper
1104 Walshtown Rd
Boomer NC 28606

42. Celelia Johnston
1104 Walshtown Rd
Boomer NC 28606

43. Shirley Bentley
1124 Walshtown Rd
Boomer NC 28606

44. Herman Bentley
1124 Walshtown Rd
Boomer NC 28606

45. TJ Stamper
1104 Walshtown Rd
Boomer NC 28606

46. Athena Stamper
1104 Walsntown Rd.
Boomer NC 28606

47. Acelia Minton
300 Jess Walsh Rd
Wilkesboro NC 28645

48. Aaron Minton
300 Jess Walsh [redacted] Rd
Wilkesboro NC 28645

49. Zetta Bidwell

50. Curtis Curlie Washington
1241 Realty St
Lenoir NC 28645

51 Ida Dean Jackson - 402 B Ridge St. N.W.
52 Ella Johnson Willow St Apt 205 - Lenoir N.C -
Billy Johnson PO Box 1462 Lenoir N.C.
Johnny Jackson 402 B Ridge St. Lenoir
Lorena Pennell - 128 Spainhour Ave.
J. L. Johnson - 1404 Meadow Lan Drive Lenoir

Kay Isaacs
116 Honeysuckle Lane
Lenoir N.C. 28645

Peggy McLean
306 Trenton Place
Lenoir N.C.
28645

Hawannah Jackson
283-A- Mountain View circle
Lenoir N.C.
28645

Lois Day
22 Lake St
Granite falls N.C. 28630

ngela Hilton
Query Rd #24
Granite falls NC 28630

Thera Dyer
349 Nu Way Circle
Lenoir N.C.
28645

Cathi Jackson
P.O. box 2926
Lenoir N.C.
28645

Melissa Greene
1994 Waverly Way
Lenoir N.C.
28645

Bobby Propst
1983 Loving Way
Lenoir N.C. 28645

Pam Ellison
P.O. box 923
Hudson N.C.
28638

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Daye & John Keller PO Box 491 Hudson NC
Betty & Marshall Bradshaw, Hudson, NC
JB & Susan Myers 3997 Horace Bolick Rd. Lenoir
Chris & Cynthia Bradshaw 3352 Straver Ct., Hudson

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one BuSiness And SAY GET OUT,
You LOSe EVery Thing!!

Please SiGN This Petition
To Help PROTecT Beach BinGO,
SMaLL BuSineSS, AND Your RighT'S
TO FREE ENTERPRIZE

Louise Hacr
Mary Phillips

Names

1 - Nancy Kelly
2. Colleen Southard 513 Renwick St SW Lenoir, NC 28645
3 Belinda Oliver
4 Judith Hightower 1111 APPLEGATE CT, LENOIR, NC
5 [illegible]
6 Linda Bailey P.O. Box 65 Lenoir N.C. 28645
7 Charles H Russell Rt 7 Box 269-A Lenoir NC 28645
8 J G allmon Rt 10, Box 952 lenoir
9 Toni Gray Mann Rt 10 Box 952 lenoir
10 Judy Green - P.O. Box 1050 Hudson, N.C.
11 Rochelle Burgess
12 Patsy Pritchard P.O. Box 3498 Lenoir, N.C.
13 Barbara Wilson
14 Alice Wilcox
15 NANCY HANNAH
16 Brenda Bass
17 Dean Hughes
18 June Chapman 205 Newland PL Lenoir NC 28645
19 Scott Hilton P.O. Box 2213 Lenoir NC 28645
20 James Norwood
21. Debbie McCroskey
22 - Grant M. Spicer
23 - Peggy Greene
24 Richard Greene
Ruby Haney
26 Shirley T. Wood

25 Joe Kelly Rt 7 Box 731 Lenoir N.C.
26 Mark Kelly Rt 7 Box 731 Lenoir, N.C.
27 Chris Green Rt 7 Box 744B Lenoir, N.C.
28 Mark Green Rt 7 Box 744B Lenoir, N.C.
29 Jane Widell Kelly 3999 Rocky Rd Lenoir, N.C.
30 Annette Suddreth
31 Richard Suddreth.
32 Don Suddreth.
33 Lillian Culley 204 Minni Rand Rd. Charlotte N.C.
34 Glenda Wilson
35 Mark Wilson
36 Shelia Griffin Rt 8 Box 176 B. Statesville, N.C. 28625
37 John Griffin Rt 8 Box 176 B - Statesville N.C.
38 Lanna Greene Rt 7 Lenoir, N.C.
39 Betty Suddreth P.O. Box 506, Lenoir N.C.
40 Johny Suddreth 503 N Davis, Newton, N.C. 28658 ~~27045~~
41 Kent Suddreth P.O. Box 836 - Toast N.C. 27045
42 Lida Martinate 239 Sharon ave Lenoir, N.C.
43 Jimmy Suddreth 929 E First St Newton, N.C.
44 Jane Schenk Rt 3 Box 222 Claremont, N.C.
45 Bertha Wells 303 Green Briar Dr. Hickory N.C.
46 Erin Parsons P.O. Box 2489 Drexel, N.C. 28619
47 Ronda Walker 239 Sharon ave Lenoir, N.C.
48 John Kabl 1401 W. Field Court Lenoir, N.C.
49 Pat Setzer 1260 Camelot Ct. Lenoir, N.C.
50 Teresa Smith Granite Falls N.C. 28645
51 Joanne Candle Hudson N.C. 28638

51. Fred H Baker 2322 Burgaw St Morganton
52. Mary D Thompson 174 Mallie St S.W Lenoir NC
53. Nancy Moore Lenoir NC
54. Brenda Proffitt
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52 James V. Suddreth
203 Newland Pl. N.W.
Lenoir, N.C. Caldwell County.

53 Glen Coffey
P.O. Box 373
Granite Falls, N.C. 28630

54 Jane Baldwin
2347 Adams Dr.
Hudson, N.C. 28638

55 Diane C. Suttle
Rt. 3, Box 9
Lenoir NC 28645

56 Norma Cline
2350-81 Spring Lake m.HP
Granite Falls N.C.
28630

57. Jeannie Lawson
150 Blackberry Dr SE
Lenoir, N.C. 28645

58. Cathy A. Hall
1039 Perkins Rd.
Lenoir, NC 28645
Fay Forrest
1039 Perkins Place
Lenoir NC

59. Annie Mae Hall
908 Meadowlane Dr.
Lenoir, NC 28645

60. Clyde A. Hall
937 Meadowlane Dr.
Lenoir, NC 28645

61. Vanessa Shatley
1309 Math Pl.
Lenoir N.C. 28645

62 Manual Shatley Jr.
1309 Math Pl.
Lenoir N.C. 28645

63 Viola Shatley
123 Martin Dr.
Lenoir N.C. 28645

64. Nita Suddreth
203 Newland Pl. N.W.
Lenoir, N.C. 28645

65 Mark McLean
1241 Grande Vista Ct
Hudson, NC 28638

Ida. Edna Cardwell
2907 Wattsmeyer Rd.
Lenoir N.C. 28645

67. Jeff Watson

68 Jim Watson
930 Overlook DR
Lenoir N.C. 28645

69 Frances St Clair
Wilkesboro N.C.

70 Lawrence Hornby
Ferguson N.C.

71 Fred L Moody
926 Meadowood Apt 72
Lenoir N.C. 28645

72. Susan Lovin
3008 Oaklawn Ct.
Lenoir N.C 28645

73 Matthew Lovins
300 S oak lawn ct Lenoir N.C. 28645

74 Dennis Hall
P.O. Box 1731
Lenoir NC

75 Jessica Newman
157 Slope Terrace
Lenoir, N.C 28645

76 Jordan Newman
157 Slope Terrace
Lenoir, N.C 28645

77 Patsy Newman
157 Slope Terrace
Lenoir NC 28645

78 Louise Haas
916 Pinecrest pl. N.E.
Lenoir, N.C. 28645

79 Sandra Williams
555 Arrowood St
Lenoir NC 28645 704 958-4225

80 Wanda Church
P.O. Box 1146
Lenoir NC 28645

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| SIGNATURE & ADDRESS | SIGNATURE & ADDRESS |
|---|---|
| 1. Barbara Pittman 5750 McDougal Dr. Fay. NC. | 1. Paulnette A. Green 5704 McDougal Drive Fay. NC 28304 |
| 2. Ruth Carson Rt 1 Box 117 H Fayetteville 28304 | 2. Myrtle Sloan 500 Pines N.C. 28307 |
| 3. Saul Diaz 2203-A Gravelly PL 28301 | 3. Sharon Buckland 4627 Owenby Rd Fay NC |
| 4. Catherine Bryant 5924 Lakeville Hope Mills N.C. 28348 | 4. Sherri Brown Rt 3 Box 105 I Fayetteville NC |
| 5. Shirley Colbert 2002 Long Dr #27 Fay 28306 | 5. Paul Hicks Rt. 3 Box 105 I Fayetteville NC |
| 6. Charles McDaniel 1611 Swilcan Dr Fay NC 28304 | 6. Brenda Worman 101 Bells Bend Raeford NC |
| 7. Alice Miller Rt 1 Box 117 H Fay NC 28304 | 7. Mary M. Mathis 310 S. McDougal Fay NC |
| 8. Anthony L Brown 2210 A UA Dr Fay NC 28304 | 8. Caretha Lee 1748 Pages Lake Dr. Stedman 28391 |
| 9. Mary Bell 5511 McDougal Dr Fay NC 28304 | 9. Gladys Fields 3016 Bowman Rd Lumberton NC |
| 10. Mary Tackett 5211 Strawberry Dr Fay NC 28304 | 10. Evelyn Hunt 127 Ivey St Lumberton NC |
| 11. Rose Jennings 1102 Oak Rd Hope Mills 28307 | 11. Sharla Lewis 600 Cumberland Rd Fay NC 28306 |
| 12. Kendrick Jefferson Rt 3 Box 210 GG Wade NC 28395 | 12. |
| 13. Selecia Mullen 508 Beaconsfield Fay NC 28311 | 13. |
| 14. Adam Mullen 3312 Lamplighter Rd. Fay NC 28311 | 14. |
| 15. Carolyn Kelly 6603 Bayswood Dr. Fay. NC. 28311 | 15. |
| 16. Mary Richardson 1883 Larry St Fay 28301 | 16. |
| 17. Myra Edge 245 Old Parkton Rd Fay NC 28301 | 17. |
| 18. Sheila Bostic 5105 Dumont St Hope Mills NC 28348 | 18. |
| 19. Tina Jones 4105 Dual Dr Fay NC 28303 | 19. |
| 20. Kathy Cox 1111 Sandfield Ct Fay, NC 28303 | 20. |
| 21. Helen Dalton 5000 1903 Winderwer Fay 28304 28304 | 21. |
| 22. Cathy Curtis 4022 Village Dr Fay NC 28304 | 22. |
| 23. Robert West 102 Cumberland Rd Fay NC 28304 | 23. |
| 24. Darrell Love 5668 Columbine Rd Fay 28306 | 24. |
| 25. Mary Grissett 2330 Stoney Fay NC | 25. |
| 26. Sandra Hughes 1853 Hilton Rd. Fay NC 28304 | 26. |
| 27. Brent Lassiter 6412 Bannock Rd. NC 28304 | 27. |
| 28. Brian Lassiter 5422 Bahamian Dr Fay NC 28304 | 28. |
| 29. Brian Heaps 117 Bodenhorn Cr Hope Mills 28348 | 29. |
| 30. Frances Baldwin 4108 Montecello Hope Mills | 30. |
| 31. Melissa Reed Drake 803 Kyne Stead Fay, NC 28304 | 31. |
| 32. Danita Melvin Boykin 5312 Wmsburg Dr Fayette 28304 | 32. |
| 33. Barney Boykin 5312 Williamsburg Dr Fayette NC | 33. |
| 34. Shirley Brown 6106 Hilcon Dr Fay NC | 34. |
| 35. Jacqueline Lafayette 6031 Beckburn Rd 28304 | 35. |
| 36. Sheila Williams 6411 Brass St Fay NC | 36. |
| 37. Brenda Phillips 4394 N.A.D. Rd. Shannon, N.C. 28386 | 37. |
| 38. [illegible] Fay N.C. 28304 | 38. |
| 39. Gwen Tuttle Fay N.C. 28304 | 39. |
| 40. Brenda Culbreth 6055 Lake Circle Fay NC 28304 | 40. |
| 41. Raleigh Daniel 5236 Nimwood Rd Fay, NC 28304 | 41. |
| 42. Linda Bridges 3928 E. Main St 4141 Hope Mills | 42. |
| 43. Sally Baldwin Rt 12 Box 621 28306 | 43. |
| 44. Betty Bullard 1020 Miller Ave Fay NC 28304 | 44. |
| 45. Mary Graham 114 Raeford Rd Lumberton NC | 45. |
| 46. ERNEST WEASLEY 388 Mc Michael Church Rd | 46. |
| 47. Elizabeth Hart 3112 Lake Circle Dr Fayette | 47. |
| 48. Joann Grant 6590 Selective Rd Fay NC 28348 | 48. |
| 49. Gloria Williams 2328 Dr. Fay 28304 | 49. |
| 50. Crystal Cottingham 631 Deerwood Ln Raeford NC 28376 | 50. |
| 51. Linda West 7335 Hymis Rd | 51. |
| 52. Ellen Wade 7335 Hymis Dr. Fay NC Hope Mills 28348 | 52. |
| 53. Jason Mercer 3704 Floyd Dr. | 53. |
| 54. Kimberly McSpadden 3704 Floyd Dr. Ft. Bragg NC | 54. |
| 55. Melissa McKnight 523 Lilyrock Dr 28348 | 55. |
| 56. Betty J. Ramsey 5312 Delaney Ct Hope Mills Fay. NC 28304 | 56. |
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To the N.C. Senate Committee,

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate bill 893 to make beach bingo illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.

| Signature & Address | Signature & Address |
|---|---|
| 1. Veronica Baker 5578 Whitton Ct Fay. NC 28311 | 31. |
| 2. Mandy Reynolds 400 Woodstown Ct 28311 | 32. |
| 3. David Hilder 4923 E Beaty St Fayetteville NC | 33. |
| 4. Deanna Fraser 2107 Pinegrove Rd Fay NC | 34. |
| 5. [illegible] 2110 Plymouth St Fay 28301 | 35. |
| 6. Betty Lafferty 218 Edgecliff St Fay NC 28301 | 36. |
| 7. Lucille Reeves 2106 Plymouth St Fay 28301 | 37. |
| 8. Lisa Fisher 209 N Plymouth St Fay 28301 | 38. |
| 9. Mary Fisher 209 N Plymouth St Fay 28301 | 39. |
| 10. Matt Williams Rosehill Rd Fay NC | 40. |
| 11. Shawn Williams Rosehill Rd Fay NC | 41. |
| 12. Lee Moore Hope Mills Rd Fay | 42. |
| 13. Becky Hollis Hope Mills Rd Fay | 43. |
| 14. | 44. |
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1. JoAnn Ellis
2. Brenda Harris
3. Shirley H McNeil
4. Jeffrey Hobbs
5. Zenito L Concepcion
6. Sandra Johnson
7. Jemie Stamey
8. Daphne Byrd
9. Jayne Ford
10. William M Jenn
11. Ernest J Jenn
12. Sylvia M. Turner
13. Mary Joe
14. Jack Joe
15. Lois Allen
16. Chris Harris
17. Joan Marab Cu
18. 507 Martin Street
19. 1122 Frank Wickes Rd.
20. 648-E Darroch St.
21. Marie Cook P.O. Box 434 Farm Life Dr.
22. Tommy Cook
23. Kathy Cook
24. Connie Godfrey
25. Karen Logan
26. Melissa C. Trobblefield
27. Blanche Ernesty
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36. Michael Gentry
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1. [illegible]
2. Virginia Wicker
3. Joan Marabe
4. Ardessa Street
5. Carolyn Barefoot
6. Mitchell Barefoot
7. Ashley Barefoot
8. Sherri Covington
9. Shawanda Brown
10. Tiffany Brown
11. Mary Williams
12. Corrina L. Evers
13. Daphine Byrd
14. Haywood Faulkner
15. Sylvia M. Turman
16. Lucy Logan
17. Henry Lee Cheeney
18. Shirley Chesney
19. Iris Allen
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1. Michael Reeves #4 Carpenter Ct Greensboro NC 27763
2. Donna Englestad 4338 Folger Rd Julian N.C 27283
3. Autumn Englestad 4338 Folky Rd. Julian NC 27283
4. Mae Tyndall 2118 Tenaway Dr
5. G. NC
6. Bettie Vilmar 511 Arcadia St 27406
7. 1003 Mowday St City 27401
8. Opie Johnson 307 Jarlet Archdale NC 27263
9. Priscilla Price 1620 Bibb St
10. Greensboro NC 27406
11. Buddy Mathews Anywhere Greensboro NC
12. [illegible]
13. Barb Edwards 3350 Cumberland St
14. Tina Gaunder
15. 4102 Adamson Rd GSO NC 27407
16. Wendy Degram 1003 Sugarloaf Dr Colfax NC 27406
17. Emily H. Lawrence 4005 Donegal Dr
18. Gracie Murphy 1502 Pepphill Rd, E'boro NC 27407
19. Ruby Sauvageau 4005 Donegal Dr Greensboro NC 27406
20. Betty Horne 4100 Hwy 29 N Greensboro NC
21. Mamie Johnson 2608 Hyde Park Dr Greensboro NC 27406
22. Helen M. Mebane 4502 B Harvard Ave G'boro NC 27407
23. Lee Walker 2610 N. Church St
24. Shirley Hall 2610 N. Church St
25. Linda L. Snyder 4309 Liberty Rd #45 Gibsonville NC 27406
26. Mandy Sales 363 Seth Ridge Rd Reidsville NC 27320
27. Esther Jane Tucker 211 W. Whittington St
28. Crystal Cooper 1201-A Rose St Greensboro, N.C. 27403
29. Norma McLean 814 Dana Dr. Greensboro NC
30. Linda Wilson 4222-B Bernau Ave Greensboro N.C 27403
31. Lori Lantz Greensboro NC 27407
32. John Lantz Greensboro NC 27407
33. Alice Jones 521 A E Friendly Ave
34. Larry Mann 1523 Highland

854 Linwoodcote St

35. Kim Reeves 1 Winston-Salem N.C. 27107
36. Mary Dipkins — Greensboro
37. Heidi Couch 1618 Willamore Ct 2207 Fawn St
38. Michael A. Mabe Greensboro N.C. 4100 Hwy 29 N 27403
39. Stephanie Messel 6t#64 Greensboro N.C 27405
40. Frances Batten 502 Syden Ave Summit 27405
41. Tammy Sparks
42. Peggy E Chrisson 1620 Pleasant Garden Rd.
43. Patricia E Chrisson 1620 Pleasant Garden Rd.
44. Doris Mizell H100 Hwy 29 N #64 Greensboro N.C. 27407
45. Thomas White 1455 Mayflower Greensboro N.C
46. Billie Collins 2400 Kirby St Apt C
47. Dana Blackwell 3607-35 S Elm Eugene St Greensboro NC 27406
48. Sondra W. Boddy 3006 Buttercup Dr. Jamestown NC 27282
49. 1806 Jaye Greensboro NC, 27403
50. Jerry Overby
51. Ann P. Davis Greensboro NC 27407 2211 4 Season Blvd
52. Wanda Carson 907 Caldwell St Gboro
53. DeLaina Capps 3202 Immanuel Rd GSO 27406
54. Barbara Lawson 8603 West Wynne Colfax
55. Sea Carter 2223
56. 1814 Whitley Pl Greensboro
57. Georgia H. Thacker 1305 SLOAN St. Greensboro NC. 27401
58. Delorese Durgan 2233 Dreta A. Gboro. N.C 27405
59. Ruby Dempsey 2515 Tampa St. Gtboro. NC. 27406
60. Gloria Clayton 1609 Spencer St Greensboro NC
61. Sandra Cummings 1613 D McPherson St
62. Tony Johnson
63. Kimberly M. Reid 1613 D McPherson St
64. Dawn Parrott
65. William Parrott
66. 2311 N. Church St.
67. Geraldine Neal 821 Ruby St Greensboro
68. Barbara Harnett 4411 Summit Ave, Gboro 27405
69. Regenia Hendrix 206 E McCullough St
70. Bobby Hobbs
71. 300 Erwin St GSO

**To the N.C. Senate Committee,**

**I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate bill 893 to make beach bingo illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.**

**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

1. KAREN D. CLARK 1st Gboro
   206 E. McCOLIC
2. Margaret Sauthen
   2250 Binkley apt D
3. [illegible]
4. Alice Robbins 715 Dale St
5. Paul F. Bruce
   804 Walker Ave. Greensboro NC 27403
6. John T. Hairston
   123 McIVER GREENSBORO N.C. 27401
7. Shirley Jones
   3309 Arlington Dr Gbo 27408
8. Doris Hunkston
   717 J Chestnut St. Greensboro N.C.
9. Dorthy Johnson
   Church St. Burlington, N.C
10. Earlene Bell
    15 Hall Towers 301 Spring Garden Gboro
11. Glenn E Tilson
    29 North Greensboro, N.C.
12. [illegible]
13. [illegible]
14. [illegible] Greensboro NC 27419
15. Margaret Hooper
    1147 Meadowlark Dr Greensboro NC 27405
16. Nelson Matthews
    2606-J MERRITT ST.
17. Greensboro NC.
18. Charla Ewin
    1508 Homeland Av
19. Betty McCain
    1508 Homeland
20. Peggy Whitehead
21. Viola Johnson
22. Thomas Vance
    James Coppa
    1608 Roseland St
    GSO 27408
23. [illegible]
24. Luther Snyder
    904 # 6 Merritt Dr
    Greensboro N.C.
25. Amber Chilstead
    4338 Folger Rd
26. Julian NC 27283
27. Linda W. Sheppard
    3620 Pleasant Grn RD GSO 27406
28. Geneva Roland
    1201 12th St GRO. 27405
29. Ruth Welch
    1201 12th St GRO 27405
30. [illegible]
31. Lucy Foley
    1808 H Willamore St. Gboro, NC
32. Josephine Robinson
    128 Rocky Knoll Circle Gboro, NC 27455
33. Zella Cooper
    3200 Regents PK. Ln. Gboro, NC
34. Larry Saunders
    3630 Fieldview Rd., Pleasant Garden 27313
35. Judy C. Wilson
    1705 J. Ave., Greensboro, NC 27405
36. [illegible]
37. Marie Hunter
    1926 Perkins St
    Gboro NC 27401
38. Nita Brim
    211 W. Whittington St. Greensboro N.C
39. Phyllis MADKins
    918 B. Aspen Drive Greensboro N.C. 27401
40. Peggy Poole
    800 Rockett St.
41. Kenneth Stone
    4104 Elwyn Drive
42. Grace Humble
    4604 Elwyn Drive
43. Jamie Barrett
    1503 W Pardaqua Rd
44. Thelma Lindsay 1806 J Ave GSO
    Ben Roberts
45. 2420 Pinegrove Dr. Greensboro NC.
46. [illegible]
47. 2303 Columbus Cir Gboro NC 27406
48. [illegible]
49. [illegible]
50. Ruth Rogers
    3605 Jamestown Rd Greensboro NC 27410
51. TOM/Bill Reid
    4338 Folger Rd Julian NC 27283
52. James Wirsett
    3808 Nash St G,Boro 27406
53. Penny Ingram
    1113 Hogan Street G'boro 27401
54. Yvette Pitt
    1801 Runyon Dr High Point 27260
55. Joey McKnight
    3511 Country Club Dr GSO
56. Brenda Carter 1111 S. Chatham
    Jesse Carter GSO
    402 Adamson rd GSO 27407
57. Robert Grainger
58. [illegible]
59. MARGARET COBB
    2207 # EGANCHURCH ST.
60. Ruth Farmer
    705 Garrett St.
61. Loretta Russ
    5353 Shadd Ln Lot #49
62. Ben Arnette
    1607 West One
63. Greensboro, N.C. 27408
64. Gene McCaskill
    1008 Fulton St.
65. [illegible]
66. Julia Mezerhoff
    2211 Gillespie Street 104
67. Doris Price - 1900 Ingram St.
    James Dempsey
    1910 A Pecan Ter. Gboro N.C.
68. Mrs Louise Simpson
    120 Carroll Mill
69. Judy Simpson
    Tommy
    1202 Cascade St.
70. Alfreda Gleaden
    1609 # B Freeman Mill Rd (City)
71. Peggie C. Oldham
    5044 Creekmeade Rd # E 27405
72. [illegible]
73. [illegible]
74. [illegible]

**To the N.C. Senate Committee,**

**I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate bill 893 to make beach bingo illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.**

**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

1. Edel Arnette
2. 2107 W. Florida St
3. Greensboro, N.C. 27403
4. Reave B. Ferguson
   P.O. Box 20833
   GSO, NC 27420
5. Sheila Witherington
6. 1949 Oak St.
   High Point NC 27265
7. Edna Maynard
   1578 Lowe St
8. Crystal Hooks
   4300 W. Gulford College Rd
9. Anitra Wilson
   117-A Village Ln.
10. Okla Wiles
    295 Brown Rd. Lot #16 Hiddenville
11. Tina Childress
    #4 Carpenter Ct Greensboro NC 27403
12. Alisha G. Sandford
    1618 Wilmore St. 27403
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**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

| | NAME + ADDRESS |
|---|---|
| 1. | Margaret Rueschhoff 7121 Townsree Fay Fayetteville NC 28303 |
| 2. | Dorothy Tracie 1421 Chemstrand Rd Fay NC 28304 |
| 3. | Michael L. Stone |
| 4. | 6421 RHEMISH DR FAYETTEVILLE, N.C. 28304 |
| 5. | Barbara V. McCray 7132 Ashwood Dr 28303 |
| 6. | Towanna Fennell 503 Sante Fe Dr. |
| 7. | WALTER WHITEHOUSE |
| 8. | 3700 NORCHISON RD 28311 Bob Mc Cue |
| 9. | 5252 Wilmington Hwy, Fay, NC 28306 Johnny Douglas |
| 10. | 4317 Atlantic Ave. 28306 |
| 11. | Cathy Ramos 937 Creek Side Run - 28303 |
| 12. | James Petty 937 Creek Side Run 28303 |
| 13. | Esco S Neal |
| 14. | Dianna E. Nichols 415 S. Lucas St. Ft. Bragg NC. 28307 |
| 15. | Colleen Hagler 1005 Little Ave 28301 |
| 16. | Tammy Baker |
| 17. | 5248 SUNDOWN C.T. FAY N.C 28303 |
| 18. | Elizabeth Tomi 1640 Hoffer 28311 |
| 19. | |
| 20. | JUANA JONES 1042 HOGAN Star |
| 21. | BIG Fats Nikola |
| 22. | 5116 SUESDAN DR FAY NC 28301 |
| 23. | Sandra Hunter |
| 24. | 2507 & Skate Ave |
| 25. | 1940 Healk, N.C. 28301 |
| 26. | Mercenda Johnson |
| 27. | Fay. N.C. 28301 |
| 28. | Kathryn McMillan 3200 Manitou Dr. Fay, NC 28301 |
| 29. | Angela Whitehead 1528 Franks rd. lot 86 |
| 30. | Spring Lake NC 28390 Sherry Snell |
| 31. | 1522 Franks rd lot 41 Sp. Lake 28390 |
| 32. | Rosa |
| 33. | Brenda Y. Chisholm 3194 Longhorn Dr. Fay, N.C. 28303 |
| 34. | Hazel Williams 314 Cumberland Dr Fay NC 28305 |
| 35. | |
| 36. | Dennis Reidman |
| 37. | Aco 07-76 Engr BN Ft Bragg NC 28307 |

| | NAME + ADDRESS |
|---|---|
| 38. | Charles Wood 6209 Thornwood Dr. |
| 39. | Cape Mills, N.C. 28348 |
| 40. | Mary Lee Salter |
| 41. | 531H Lowery ct |
| 42. | Fayetteville NC 28303 |
| 43. | Mitsu G. Haynes. |
| 44. | 4610 Bedford Rd 28314 2636 Eldorado Rd. |
| 45. | Tammy Simmons |
| 46. | Felica Thomas 9A Bastogne DR Ft Bragg N.C 28307 |
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**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

1. Barbara McAdams
2. Annie Booker
3. Eugene Glenn
4. Constance Staley
5. Tracey Staley
6. Tammy Chambers
7. Jamie Chambers
8. Jimmy Chambers
9. Mary Bumgardner
10. Jodie Chambers
11. Jewel Rogers
12. Dorothy S Brown
13. Tom Rogers
14. Lucille Ellis
15. Shirley Taylor
16. Marie Ingram
17. Beverly Summers
18. Helen McCallum
19. George Lea
20. Delma Potts
21. Theodore Williamson Jr
22. Ruby Wright
23. Edna Waters
24. Carolyn Womack
25. Nathan S
26. Sheronna Comeaux
27. Ruth Williamson
28. Linette Elayne Brown
29. Cynthia Shaw
30. Patricia Anderson
31. Mary Lee
32. Mae Bee Morris
33. Ed Horne
34. Jan Johnson
35. Mazelle Moore
36. Bridgette Hope
37. Jerome Johnson
38. Felicia Herlein
39. Dan Brooks
40. Gwen McKnight
41. Ann Thompson
42. Deborah Barnes
43. Rose Gainey
44. Elizabeth Henson
45. Yvonne M Neal
46. Thomas Rivera
47. Kim Heard
48. Beverly Scott
49. Daphni Ellis
50. Delma Potts
51. Felicia Wharton
52. Vergus Williams
53. Tammy Hines
54. Verona Cook
55. Geneva C. Bullock
56. R. Sanders Turner
57. [illegible]
58. Bonita Ford
59. Linda Dana
60. Lisa Garner
61. [illegible]
62. Bill Clinton
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**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

4238 United St.

1. Dawn Alston
2. Brenda Allen
3. Rebecca McCormick
4. Mary K. Davis
5. Donna Pietrantozzi
6. Earl Lewis
7. John Pittard
8. Dawnes Pittard
9. VERNA THOMAS
10. EARLINE HENRY
11. Deandra Wilson
12. Antwan Wilson
13. Anthony Pittard
14. Towanda Wilson
    700-D west Florida St.
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1. Gloria Cottard
2. Sandy St
3. Queen Thomas
4. 2608 Shaw St
5. Emily Newlin
6. Pamela Morrison
7. Pamela Whitsett
8. 1306 Sloan St
9. Donnie Ellis
10. 260 Holt Ave 27405
11. Tina Thatch
12. 1506 A - Autumn Dr 27405
13. Antoinette Smith
14. 2003 C Evans Dr 27401
15. Michelle Floyd
16. 3803 Cameron Ave 27406
17. Myrna Wilkerson
18. 1202 Willard St 27405
19. Carla Wilson
20. Willa Morrison
21. Vanessa M. Williams
22. 1101 N. Elm St #707 G'boro NC 27401
23. Mary Coleman of
24. Cynthia Coleman
25. Cindy L Coleman
26. #1 Carlynn Ct G'boro
27. Sheila Green
28. 2301 #C Phillip Ave G'boro NC 27405
29. Nancy Walker of
30. 2 Lord Tolley Ct 27455
31. James Alston
32. 1238 Winfield St
33. Rosia Neal
34. 1702 Walker Ave. G'boro NC 27403
35. R. Neal
36. 1702 Walker Ave G'boro, NC 27403
37. Danielle Williams
38. 1101 N. Elm St #707 G'boro NC 27401
39. Sandra Gatt
40. 3555 Old Cartridge #1106 27410
41. Mary Brown
42. 707 D Clapp
43. Emma Morris
44. 226 B. Webster Rd.
45. Wanda Mills
46. 2600 E Wendover.
47. Don Whitsett
48. 2600 E Wendover Ave
49. Yolanda Finney
50. 13 Partnership Court
51. Denise Safley
52. 29N 55801
53. Wayne Wilson
54. 848 Vance St
55. Willie Mae Mc Nair
56. Vanessa Hayes
57. Clyde Chatman
58. 2904 A Cottage Pl Greensboro
59. Sophie B Cl
60. 2904 A Cottage Pl Greensboro
61. Tommy Darden 9295 Wiley
62. Gnce 27401
63. Beverly Summers
64. 809 W. Arnold St. Greensboro N.C. 27401
65. Bill Parlene Thomas
66. Jessie Rogers 2806
67. Emerson Dr
68. Gb NC
69. Ruby Wright
70. 1232 B. S Eugene St.
71. Viola Shelton
72. Daryl McCray
73. 610 Sedan St
74. Gloria Harper - 2303 Ponderosa Dr.
75. Michael Hester
76. 1506 A. Autumn Dr
77. Latina Hester
78. 1506 A. Autumn Dr.
79. Darlene Thomas
80. 830 Holt Ave. 05.
81. Bill Thomas
82. 830 Holt Ave. 05
83. Anthony Thomas
84. 2000 Vanstory St. 07.
85. Ola Patterson
86. 1502 Twain
87. Rosa Chivey
88. 514 Florida St 06
89. Sid Patterson
90. 1502 Twain Rd.
91. Pete Thompson
92. 514 Flordia St.
93. Mekia McCollum
94. 2819 #B N. Henry Blvd.
95. Louise Washington
96. 3746 Enoflit St Greensboro 27401
97. Michael B Jemison
98. 405-A Avalon Rd. G'boro. 27410
99. Pamela Nalls 6 Quad oak Dr.
100. Brenda Anderson
101. Demetrius S Carson
102. 1711 Brighton St.
103. Mary Floyd
104. 1409 Fairview St.
105. Vanessa Sellars
106. 3719 Dawson Ave.

Darla Hargett
919-527-6649
Bingo # 919-527
78-87
after 6pm
Mob 919-939-46
46
Bill # 893 Black Bingo
Prohibition
May 20, 1997
L. in Rae.

**To the N.C. Senate Committee,**

**I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate bill 893 to make beach bingo illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.**

**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

1. Michael Welch 7025 Willowbrook Rd.
2. Jamie Martin 201 Pearson St
3. John Tate 107 Brickyard Ln.
4. John Sparhouse 1826 Wayne Ln
5. Jamal Roberts 342 Ayershire Ct.
6. Jerry Melvin 116 N 6th St
7. Mark Melvin 5126 Spruce St
8. John Garrett Charles Ave Fay
9. Jack Pitts 5906 Rustleward
10. Wanda Odom 216 Bastield Rd Fay NC.
11. Allen Berg 4841 Lumber Bridge
12. Alex Nolan 4998 Quinberry Rd.
13. Frank Strap 1100 9th St.
14. John Whitman 216 Bordeaux Dr.
15. Jessie Nunnery 401 Liddy St
16. Jane Campbell 6 Rockfish Ln
17. Billy Lyons 679 Bordeaux Dr
18. Marion Inspire 1052 Appomattox Cir.
19. Robert Bell 604 McLeod St
20. Rita Thomas 418 Ashley St.
21. Mary Thomas 5325 Otter Dr. Fay NC.
22. John Lee 3340 Reginald Rd.
23. Terry Owens 6849 S. Staff Rd
24. Barbara Faircloth Stedman, NC.
25. Judy Evans 4718 Americas Cal Fay
26. Jim Brown 1108 Briggs Blvd.
27. Jesse Brown 224 Apache St
28. Inga Strickland 209 Nicole Dr.
29. Ann Strong 2102 Baltimore Dr. Fay.
30. Linda Berry 1209 Middle Rd Fay NC.
31. Teresa Chavis 303 Park St. Fay NC.
32. Lillie Cheeney 1533 Bingham Dr.
33. Josiah Gazelos III Lamb St Fay.
34. Brenda Faggart 2620 Glenwood Ave
35. Mary Kenyon 2526 Murchison Rd Fay
36. Pierce Rhodes 1767 Sutton St Fay
37. Brenda Stone 533 Sicily Dr.
38. Addie Evans 2121 Rosehill Rd Fay NC.
39. Virginia D. Dunn 325 Cool Spring St -
40. Marion Dunn 4998 Donadact.
41. Laurie Lowers PO Box 512, Hope Mills -
42. Mandy Carter 6612 Amadonis Dr Fay NC.
43. Rebecca Carter 6612 Amadonis Dr -
44. Helen Hedgson 4226 Vern Plaza Cv.
45. Ruth Evans 1511 Pierce Rd
46. Lisa Brewington, RT 9 Box 386 Fay NC.
47. Donald Stedman - Fay NC -
48. Dawn Young - Dunn NC.
49. Margaret Tydall - Westgate, Hope Mills
50. Lena Evans 620 Clinton Dr.
51. Annie Edge - Clinton Rd Fay 28301
52. Jean Edge Clinton Rd Fay 2301
53. Mary Joe Parker Middle Rd Fay
54. Dail Hair 5129 Dunn Rd Fay.
55. Ellen Vincent 2132 Cleveland St
56. Robin Mellon 216 Eleanor St Fay 28301
57. Connie Grones 213 Eleanor St -
58. Ethel Grones 214 Eleanor St Fay St -
59. Linda Grones 219 Eleanor St Fay St -
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**To the N.C. Senate Committee,**

**I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate bill 893 to make beach bingo illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than ~~May 5, 1997~~.**

**I ask as a citizen and a tax payer of North Carolina, ( and a voter ), to please NOT pass this new bill.**

1. Betty Foolbeer
2. 2213 Tolgate Rd
3. Yvonne Tripp
4. 511 Quality Rd
5. Deborah Tripp
6. 1290 Tilia Dr.
7. Forrest Kent
8. 7202 Sandish Ct.
9. Jason Farone
10. 814-A-Bourst Fayetteville NC
11. Lottie Douglas
12. Dr. Morris Gamble
13. Betty L. Bullard
14. Lula Gayle
15. 888 Southern Circle
16. Fay. N.C. 28311
17. Lee Golubiewsky
18. Rt 1 Box 266 A, 10 Hwy 28301
19. Natasha A Lloyd
20. Regencia Grasslada Dr.
21. Precy Whitehead 6803 Racial
22. Cpat Whitehead Dr.
23. Florence Holt 520
24. Quincey Holt McDaniel St.
25. 38.
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# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Roy C Hanton 5-7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

James Lapan 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Stephanie Smith — 5/6/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Ruth Westbrook 5/7/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

James Westbrook — 5/7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Leora Durham  5/7-19-97

SIGNATURE  DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Vester Taylor 5-7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

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5-7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Alice Galstian _____ 5/6/97 _____

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

5-7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Jeffrey T. Fuller 5/7/93

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Charles E Field 5/1/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Marjorie Jean King  5-7-97

SIGNATURE  DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Amanda Barg  5.6.87

SIGNATURE  DATE

Please don't stop
Beach Bingo

Gracie Bowling
5-7-97

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Shirley P. Spalding 5/7/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Mary Burton — 5/6/97

SIGNATURE — DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Thelma Norris 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Barbara Gregory _____ 5-6-97 _____

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Brian Russell 5-6-97

SIGNATURE DATE

# PLEASE KEEP

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# S B " 893 "

Justin Johnson 5-6-97

SIGNATURE DATE

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# S B " 893 "

Linda Lowe — May 6, 1997

SIGNATURE DATE

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# S B " 893 "

Vivian D Flanagan 5-6-97

SIGNATURE DATE

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# S B " 893 "

Haywood Thompson 5/6/97

SIGNATURE DATE

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Shalimar Council 3-6-97

SIGNATURE DATE

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Billy Wrenn 5/6/97

SIGNATURE DATE

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Pamela L. Lafler — May 6 1996

SIGNATURE — DATE

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Eric L. Hart 5-6-93

SIGNATURE DATE

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Viola Caraway 5-6-97

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Sue H. Gomes 5/6/97

SIGNATURE DATE

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Pearl Harris 5-6-97

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Jason Francis 5/6/97

SIGNATURE DATE

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Ayoka Harding 5/6/97

SIGNATURE DATE

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Rosalyn Harding — 5/6/97

SIGNATURE DATE

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Mildred Stone 5/6/97

SIGNATURE DATE

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Sheila Store 5/6/97

SIGNATURE DATE

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Virginia Rumsford 5-6-97

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Maria B. Rogers 5/6/97

SIGNATURE DATE

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5-6-97

DATE

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Bridget Bunk 5-6-97

SIGNATURE DATE

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Carolyn Hughes 5-6-97

SIGNATURE DATE

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Emma Bailey-Cows 5-6-97

SIGNATURE DATE

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# S B " 893 "

Evelyn King 5-6-97

SIGNATURE DATE

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Jackie Holloway 5-6-97

SIGNATURE DATE

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# VOTE NO ! !
# TO

# S B " 893 "

Sylvia Cotten 5-6-97

SIGNATURE DATE

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# VOTE NO ! !
# TO

# S B " 893 "

Maebelle McClamb 5/6/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Bill Braun 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Patricia Branch 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

~~Please Keep~~

# S B " 893 "

Jay Dyson 5-4-91

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Carolyn McQuillen 5-4-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

John Donaldson 6-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Mary L. Payton 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Carrie Nichols — May 6, 1997

SIGNATURE — DATE

Please Keep
Beach Bingo
Vote NO !!
TO
SB 893

Linda Bandy
5/7/97

Please Keep
Beach Bingo
Vote NO!!
on
SB "893"

Jacqueline Jenkins 5/8/97

Please Keep
Beach Bingo
Vote No!!
To
S.B. '893'

Rudolph Bunch 5-7-97

PLEASE Keep

Beach Bingo

Vote NO!!

TO

SB "893"

Gail S 5-7-91

PLEASE KEEP
BEACH BINGO
VOTE NO!!

TO
SB 893!!

Nancy Ewen
5-7-91

PLEASE VOTE

Beach Bingo is safe, cheap and Fun. What else can you do for enjoyment & spend $8.00 For all Night. Vote No To SB 893. Keep us free, We are grown people, Tax payers & voters That should be able to spend our money as we please. Pass laws that stop drug pushers & drunk drivers, Not "grandma's" & "grandpas" that need a place to feel save & happy.

Think before you ACT.

Steve Pendergraft

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Please Don't close Beach Bingo. I am at home all day and Beach Bingo is the only place I can go and feel safe.

Yvette M. Francis-Vaughan 05-06-97

SIGNATURE DATE

Yvette M. Francis-Vaughan
Durham, N.C. 27701

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Irene Thorpe 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Elizabeth Thornton 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Lisa Lawrence — May 6, 1997

SIGNATURE DATE

Let the people spend their money the way we want to. This land is the home of the free or do we need to change the National Anthem

I think you should let people choose to play Bingo or any other thing that not hurting or infringing on any rights of any one else, you'd voting right now on selling Liquor in resturaunts and other public places, which could put more drunk drivers on the road, I have been playing Bingo for years and never once saw it do harm to any one, Don't take the right to play away from us

Roger Lee Hoosier
608 Midway Ave
Durham N. C. 27703

We do not want the right to play Bingo took away from us There are too many other things that need attention to make this state a better place, Lets Keep Beach Bingo.

Linda C. Hoosier

No one is holding a gun to our heads so please go after the drug dealers + murders.

Please vote no

TO

SB "893"

Donna O. Field

5-6-97

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Donna O. Field 5-6-97

SIGNATURE DATE

We should Keep Bingo in North Carolina!

Beach Bingo

Vote NO!!

To

SB "893"

Sue H. Gmos 5/6/97

To Whom it May Concern

People should realize that Beach Bingo keeps young people off the street and out of trouble. There is no harm in playing

# PLEASE KEEP

Bingo. It does give people something to do to relax and enjoy something decent

# BEACH BINGO

# VOTE NO!!

to do. As working people we should

# TO

be able to spend our money on something decent to do as to spending it on drugs

# S.B. "893"

and other things. Please keep our Bingo places open. Thank you.

Louise Allen 5-6-'97

SIGNATURE DATE

Bingo keeps a lot of young People out of the Street. It also gives People a Chance To relieve a lot of stress and a Safe Place To go. It is a Cheap form of entertainment for elderly People.

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Esther Kenney — 5-6-97

SIGNATURE DATE

Please vote NO to "SB 893".
Beach Bingo is a fun enjoyable activity that Senior Citizens can participate in. We can't stay out as late as your Charity places want to stay and it's not fair to have to spend our money where we don't want to. Beach Bingo is "Cheap" and "fun." Don't make a decision without knowing how we feel.

Thanks,

Penelope

Chapel Hill NC

933-1030

Dear Sirs

05-06-97

Please Do not Vote to Close Beach Bingo in North Caroline. Beach Bingo is a place where we can come as older citizens and feel free and safe. We spend our money where we wish to spend it and no one should be able to tell us where, when, and how to spend the money I made and sweated for.

Don't Close Beach Bingo

V. M. Francis

V. M. FRANCIS

I wish Beach Bingo could stay Open. I enjoy going out during the wk. to relax & socialize in a safe environment. It's a hobby, & somewhat a sport for most people. Its not harmful, but instead very enjoyable. Please reconsider.

Thank You
Joni Russell
5-6-97

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Jeri Russell — 5-6-97

SIGNATURE — DATE

May 6, 1997

This letter is in reference to "Beach Bingo". I am a senior citizen. I like playing Beach Bingo. Beach Bingo is a clean & fun game; it keep me off the streets, and I feel safe where ever I play. Please don't take away my rights to spend my money as I choose. The lottery is not in effect in N.C., but we all go to the Va. Line to play the lottery; which that could be monies for our state for highways & better education, etc.

Please Keep Beach Bingo's legal.

Thank you

Mrs. C.W. Nichols

The Letter "G"

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

("God works") in many ways!
Mabe Beach Bingo is one way for many
People To keep off stress of Trobles
Thank You

Freddie R. Hunt 5-6-97

SIGNATURE DATE

("A Safe Place!)

Joy Dixon. Please keep Beach Bingo. I Vote No
SB "893".

Carolyn McQuilkin - PLEASE Keep Bench Bingo.
Vote No To "SB" 893".

Plase Keep

Beack Bénao

Vote no !!

To

SB " 893 "

John Donaldson 6-6-97

Please because it keep young people off the street. most of them be in Bingo.

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Lisa Lumsden 5-6-97

SIGNATURE DATE

Please Keep
Beach Bingo
Vote NO
To
SB "893"

Margaret Coard 5-6-97

PLEASE Keep

Beach Bingo

VOTE NO!!

To

SB "893"

Angela Peace 5/7/97

I don't feel that NO ONE has a right to tell me how to spend my money. I work for a honest Living, so therefore I think I should be able to spend it the way I please. We don't have any social activity as it is, for people 35+ Over to participate in.

GENEVA T. Hicks

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Geneva S. Hicks 5-6-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

5-7-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Naomi Ashford Gruber 5/7/97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Pat McCartney — 5-7-1997

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

P. M. Ashworth _____ 5-7-97

SIGNATURE DATE

Admitted By: Caroline S. Proctor

12C—HICKORY DAILY RECORD—Fri., May 9, 1997

# AP News Briefs

## Bill Would Eliminate 'Beach Bingo'

RALEIGH — Bingo games in North Carolina are supposed to raise money only for charities, but the charities say the spread of small-pot "beach bingo" parlors is hurting their games.

Beach bingo "is big business and it is running charity bingo out of busi ness," Brenda Brewer, president of the N.C. Association for Charity Bingo told a Senate committee Thursday.

She spoke before the Senate Judiciary Committee in support of a bill tha would eliminate beach bingo and tighten the requirements for charity bingo games.

State law allows charity bingo events to be held at limited times and wi limited prizes. A prescribed percentage of the profits must go to the spons ing charity. Beach bingo, which has much lower jackpots, can oper throughout the week.

These Signatures & Names are in protest to changing, altering, or diminating Beach Bingo. We are Signing this petition to stand as documented proof that we are taking a Stand for our right to choose where each of us play bingo (Beach bingo or Charity bingo).

Donna Leonhardt
P.O. Box 1094
Cherryville, N.C. 28021

Kay Neal
107 Huss Av
Cherryville, N.C 28021

Lisa Neal
Route 1
Crouse N.C

Linda Champion
101 Champion dr.
Cherryville N.C. 28021

Carolyn Wilson
2023 Eaker Dr
Cherryville NC

John Neal
107 Huss Av
Cherryville N.C
28021

Don Wilson
2033 Cabe Dr.
Cherryville NC
Dot McQueen
509 Park Dr
Cherryville N.C.
Frances Seate
113 Dalton St
Cherryville N.C
Marline Preathe
P.O. Box 41
Cherryville N.C.
Carol or Connelly
519 Tot Dellinger Rd
Cherryville, N.C.
Betty Lane
P.O. Box 195
Crouse, N.C.
Michael Lane
P.O. Box 195
Crouse, N.C
Virginia Minick
700 Battleground R.D
Lincolnton N.C
Lue Hannick
700 Battleground R.D
Lincolnton N.C
Jean Nance
218 McCleneau

Wayne Garner
1195 Peter Rd.
Lincolnton, N.C
Ruby H. Cook
1003 S Grove St. Ext
Lincolnton, N.C. 28092

Jane Scronce
725 Clay St.
Lincolnton, N.C. 28092
Brenda Brown
513 S. Flint St.
Lincolnton N.C. 28092
Delsie Griggs
Joyce Cox
Payton Griggs
Melinda Bowen
Antrone Griggs
Danielle Williams
India McCree
Cierra Sawyer
Shawn Seignon
4526 Crouse Rd
Crouse, NC 28033
Dede Seignon
4526 Crouse Rd
Crouse NC 28033
Debra S Moore
Larry S. Moore

Please Sign this Petition if you wish to keep Beach Bingo in N.C.
Thank You for Your Support!

| | |
|---|---|
| Rhonda Brown | 312 MOTZ AVE. Lincolnton |
| April Neal | 107 Huss Ave. Cherryville |
| Lisa Burke | |
| Deborah Reynolds | 108 N. Rudisill Ave Cherryville |
| Randy Reynolds | " " |
| Pearl Ramsey | " " |
| Bradley Duncan | 101 Champion Dr. - Cherryville |
| Mike Human | 612 W. Main Ext. Lincolnton, N.C. |
| Debbie Human | 612 W. Main Ext. Lincolnton, N.C. |
| Ruth Lovelace | 123 Oakleaf Cherryville N.C. 28021 |
| Ola Lovelace | 109 Milo Neal Rd. Cherryville NC |
| [redacted] Walker | 109 Milo Neal Rd. Cherryville N.C. |
| James Cline | 631 Waco NC |
| Melody Sigmon | 652 S. Grove St. Lincolnton, NC 28092 |
| Ken Proctor | 185 Arrowood Lane, Lincolnton, N.C. 28092 |
| Sylvia Neal | PO Box 171 Lincolnton NC 28093 |
| Joyce A. Cox | PO Box 1191 Linc NC. 28093 |
| Sheri Winchester | P.O. Box 296 Iron Station N.C 28080 |
| Gary Hester | 310 Black St Cherryville, N.C 28021 |
| Terry Wehr | 313 Brown St Cherryville NC. 28021 |
| Terry Short | 4704 Delight Rd Lawndale N.C. 28090 |
| Dorsah Ayers | 4704 Delight Rd. Lowdale N.C. 28091 |
| Clint Williams | 2033 Esther Dr. Cherryville NC |
| Jonathan Blanchard | |
| Clint Wells | 804 [redacted] Waco Rd. Waco NC |
| Virginia Wells | 804 Waco Rd. Waco NC |

| | |
|---|---|
| Bobby Bryant | 1131 South Aspen St, Lincolnton |
| Debbi Bryant | 1131 South Aspen St, Lincolnton |
| Kathleen Shipley | 235 Bridges Circle, Cherryville |
| Shirley Letts | 2355 Blackburn Rd Grover |
| Jewell Hyman | 2354 Blackburn Rd grover |
| Barbara Brass | 702 Westgonburo Rd., Bessemer City N.C. |
| Roy Lane | P.O. Box 195, Crouse, N.C. |
| Gary Lane | P.O. Box 195, Crouse, N.C. |
| Charles Brown | 513 S. Flint St. Lincolnton, N.C. |
| Charles Brown, Jr. | 513 S. Flint St. Lincolnton, N.C. |
| Judy Sain | 1002 E. Lincoln St. Lincolnton, N.C. |
| Donnie Brown | 1002 E. Lincoln St. Lincolnton, N.C. |
| Mary Brown | 1006 E. Lincoln St. Lincolnton, N.C. |
| Ann Long | 1010 E. Lincoln St. Lincolnton, N.C. |
| Joan Cook | P.O. Box 173, Crouse, NC 28033 |
| Jerry Cook | P.O. Box 173, Crouse, NC 28033 |
| Elaine Cook | P.O. Box 173, Crouse, NC 28033 |
| Bill Scronce | 725 Clay St., Lincolnton, NC 28092 |
| Pam Murray | 908 W. Church St., Cherryville, N.C. 28021 |
| Virginia Baxter | 908 W. Church St. Cherryville, N.C. 28021 |
| Louise Tyler | 3553 N Anderson Rd Lincoln 28030 |
| Essie Proctor | 910 Delview Rd, Cherryville, NC 28021 |
| Sherry Proctor | 910 Delview Rd, Cherryville, NC 28021 |
| Dennis Proctor | 910 Delview Rd, Cherryville, NC 28021 |
| Linda Clippard | 1875 Arrowood Lane Lincolnton, NC 28092 |
| Mary Pruitt | 2733 Polkville Rd Shelby NC 28150 |
| Teresa Reynolds | 602 East First St Denver |
| James Reynolds | 602 East First St Denver |

Cierra Moore
Kyle Moore
Lillian Clinton
Alan Clinton
Kimberly Clinton
James Clinton
Linda Bolinger

Caroline S. Proctor
1889 Arrowood lane
Lincolnton, NC 28092

Mark Champion
1889 Arrowood lane
Lincolnton, NC 28092

Todd Horton
615 St Grove
Lincolnton, NC 28092

Beedie Clippard
1875 Arrowood lane
Lincolnton, NC 28092

Kenneth Proctor
1875 Arrowood lane
Lincolnton, NC 28092

Kenny Keever
685 G E Hauss Rd
Lincolnton, NC- 28092

Polly Gibson
629 Cheese Rd
Lincolnton, NC 28092

Tammy Clippard
3556 Fosthall Lane
Vale, NC 28450

Carolyn Proctor
1875 Arrowood Lane
Lincolnton, NC- 28092

Jimmy Clippard
3556 Fosthall Lane
Vale, NC 28420

Pat Smith
3357 W. Anderson Rd.
Laidler, NC 28650

Jim Smith
3357 W Anderson Rd
Laidler NC. 28650

Jimmy Smith, Jr.
Walker Branch Rd
Lincolnton NC

Jan Smith
Walker Branch Rd
Lincolnton, NC 28092

Elaine Hefner + Dennis Hefner
2940 Bess Chapel Ch. Rd
Cherryville, NC 28021

~~Jacqueline Jacqueline~~ 174 EA Bingham Rd Kings Mtn, NC
Ryan Bigger 176 EA Bingham Rd Kings Mtn, NC

Dorothy Oates - 611 Clyde St. Cherryville N.C. 28021
Viola Hope 612 Clyde St. Cherryville N.C. 28021

Jeff Wilson 2940 Bess Chapel Ch. Rd., Cherryville, NC 28021
Jennifer Wilson 2940 Bess Chapel Ch. Rd., Cherryville, NC 28021

Sandra Carpenter 324 South Pink St. Cherryville, NC 28021

Melissa Carpenter 324 South Pink St. Cherryville NC 28021

Margie Mathis 1888 Arrowood Lane, Lincolnton, NC 28092

Mallie Hughes 1877 Arrowood Lane, Lincolnton, NC 28092

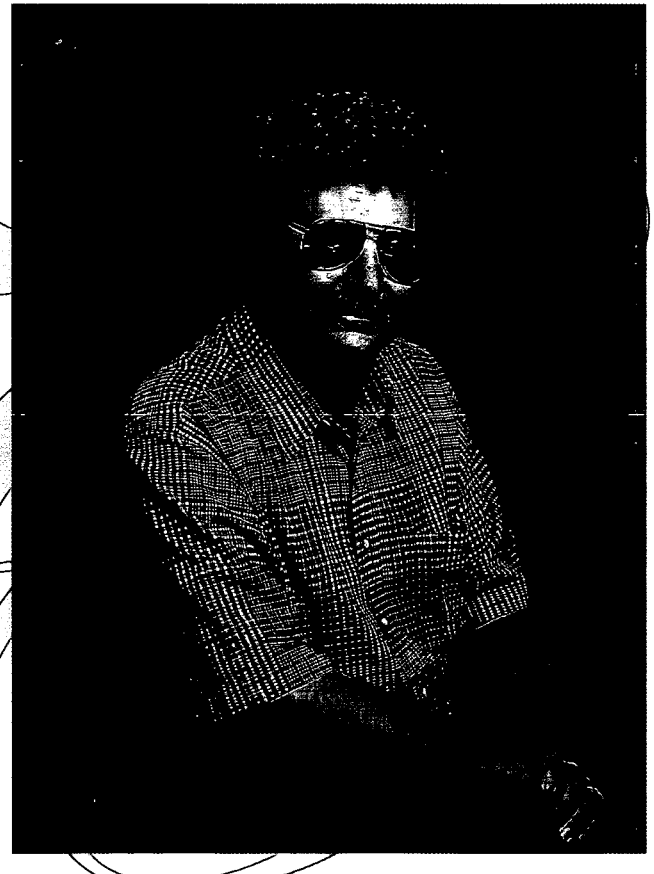
Lynn Hope 1891 Arrowood Lane Lincolnton, NC 28092

Dot Snider 1874 arrowood lane Lincolnton, nc 28092

This Is From A Beach Bingo

Every community gives something to its members • • •

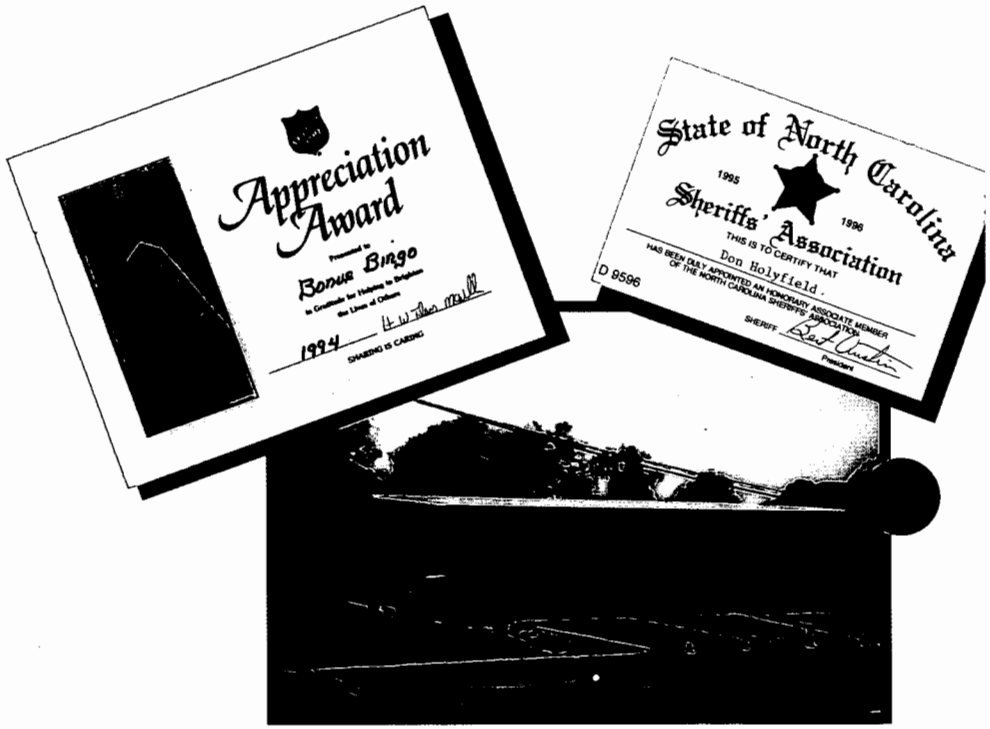
• • • but it takes someone special to return the favor.



DON HOLYFIELD

"Every man according as he purposeth in his heart, so let him give; not grudgingly, or of necessity: for God loveth a cheerful giver."

I Corinthians 9:7




Picture by Freddy Sloan, Chief of Police, Jonesville

"Thanks Don Holyfield and Starmount Bingo for donations to the Jonesville Fire Department building fund."

*Toys were brought and given to children from ages 0–16 years of age. Some of the bingo players stayed after bingo to help separate the toys. We also had refreshments for the families when they came by. Over 100 needy families received a box of canned food, a canned ham, oranges, apples, and candy.*

***Special thanks to all the bingo players and organizations throughout the area—Yadkin County Ministries, Tri-County Ministries, YVEDDI, and Head Start—who helped supply names of needy families.***

# Listen to what Don has to say about giving...

"Over the years, members of my family and I have benefitted from the kindness and generosity of the community. I have always hoped to be in a position to be able to, in some small measure, return some of that generosity. Fortunately, my businesses, Starmount Plaza Bingo and Bonus Time Bingo, have given me the opportunity to work with many persons who not only enjoy Bingo for its good, clean entertainment value, but who also enjoy giving and helping meet the needs of the community.

Faye Wood accepts a $1,500 gift from Don Holyfield. Red Cross was the designated charity for the bingo games Don held on Merita Street in May.

'It has been said that it is more blessed to give than to receive. To that, I add that the joy and satisfaction experienced by a gift's recipient cannot hold a candle to the joy and satisfaction which the act of giving brings to the giver.

'All the year round, we are mindful of the fact that there are many people in our community who need food, clothing, and shelter. There are dozens of underprivileged children in our community for whom each holiday is simply another unhappy reminder of their "have-not" status.

'I hope that as each holiday season approaches, each person in the community with the means to do so will make a generous gift to the charity of his or her choosing. It will be the best gift you ever receive."

*If you like, you may leave your presents with Don, and he will distribute them to those in need.*

*The Mt. Airy Salvation Army receives a generous gift of food and toys from Don.*

# What if...

...no one were there to help a family whose young child was facing a life-threatening illness?

...there were no paramedics to respond to medical emergencies?

...the fire trucks were slow to start because they had to sit outside during cold weather?

...needy children had no Christmas?

...abused, battered, and homeless persons had no place to go?

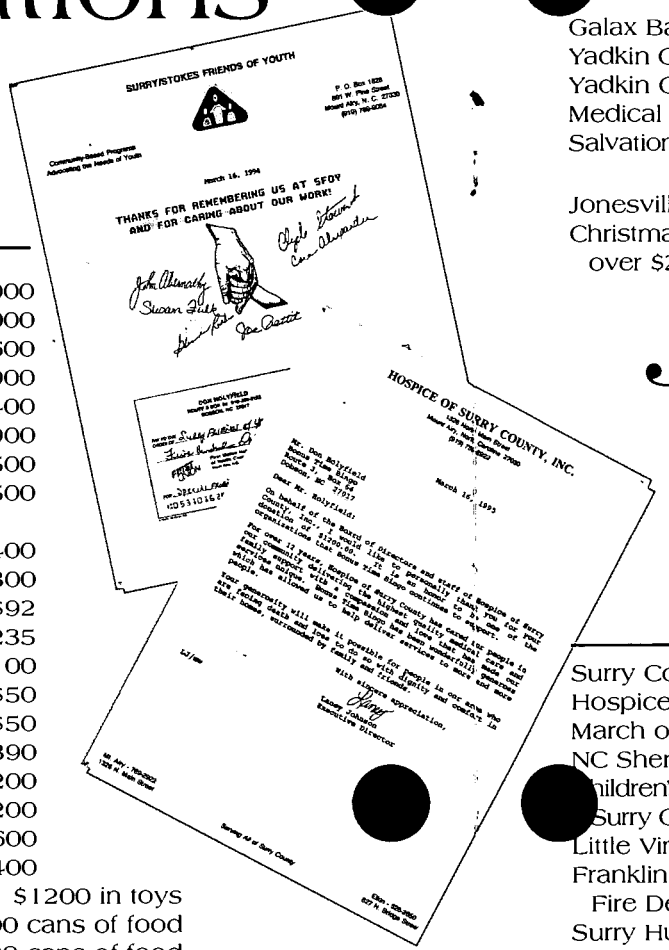
Thanks to the generous people and businesses in our community, these needs are being addressed and met by persons who volunteer countless hours of their time, as well as countless others who provide financial resources to assist their efforts—people like Don Holyfield and Bonus Time Bingo.

*On the following pages is a brief listing of Don's personal donations over the past several years.*

# Donations

## 1994

| | |
|---|---|
| Yadkin County D.A.R.E. | $4000 |
| Jonesville Fire Dept. | $3000 |
| Hospice of Yadkin County | $1600 |
| Alternative Education-Mt. Airy | $900 |
| Surry County D.A.R.E. | $1400 |
| Mt. Airy D.A.R.E. | $1900 |
| Surry Friends of Youth | $500 |
| Dobson Swim Club | $500 |
| My Friends' House, homeless shelter in Dobson | $400 |
| Send needy children to camp | $300 |
| Jonesville After School fundraiser | $92 |
| March of Dimes | $235 |
| Elks | $100 |
| Yadkinville School-girls softball | $50 |
| W. Yadkinville School Walk-a-thon | $50 |
| TriCounty Ministries | $390 |
| Yadkin County Ministries | $200 |
| YVEDDI | $200 |
| Hospice of Surry county | $600 |
| Children's Center of Surry | $400 |
| Toys for Tots | $1200 in toys |
| Canned food drive-Mt Airy | 1200 cans of food |
| Dobson-Foothills Food Pantry | 1100 cans of food |
| Christmas at Jonesville | 4000 cans food |



SURRY/STOKES FRIENDS OF YOUTH

March 16, 1994

THANKS FOR REMEMBERING US AT SFOY AND FOR CARING ABOUT OUR WORK!

HOSPICE OF SURRY COUNTY, INC.

Dear Mr. Holyfield:

On behalf of the Board of Directors and staff of Hospice of Surry County, Inc., I would like to personally thank you for the generous donation of $1500.00 to Hospice of Surry County.

Sincerely,

Executive Director

Medical Donations to Individuals:

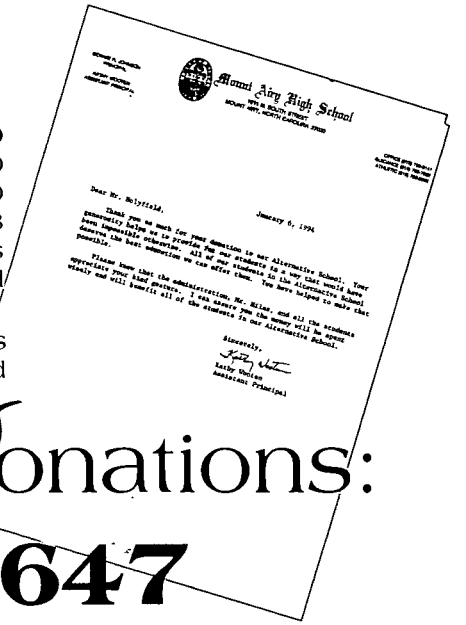
| | |
|---|---|
| Heart Attack victims | $250 |
| Cancer victims | $900 |
| Other medical donations | $2518 |
| Other Donations | $400 |

Don Holyfield, owner and operator of Bonus Bingo in Mount Airy, presented Sheriff Connie Watson with a check for $500 for the Surry County DARE program. Holyfield, a strong supporter of DARE, said contributions will assist the children of Surry County.

## 1993

| | |
|---|---|
| Galax Band | $100 |
| Yadkin County D.A.R.E. | $1000 |
| Yadkin County Rescue Squad | $500 |
| Medical Donations | $1278 |
| Salvation Army Mt. Airy: | $1500 in toys<br>1000 cans of food |

Jonesville, Christmas 93:
Christmas for 200 kids and 100 families
over $2500 in toys, 3000 cans of food



Mount Airy High School

January 6, 1994

Dear Mr. Holyfield,

Thank you so much for your generosity to our Alternative School. Your generosity helps us to provide for our students in a very real way. Your concern for the best education we can offer them has been a blessing to us.

Please know that the administration, Mr. Elliot, and all the students appreciate your support. I will assure you the money will be spent wisely and will benefit all of the students in our Alternative School.

Sincerely,

Assistant Principal

# Total Donations:

# $47,647

**Plus over 13,800 cans, bags, or boxes of food and 275 turkeys and canned hams**

## 1995

| | |
|---|---|
| Surry County D.A.R.E. | $2200 |
| Hospice of Surry County | $1200 |
| March of Dimes | $125 |
| NC Sheriffs' Association | $20 |
| Children's Center of Surry County | $2300 |
| Little Vine Church | $100 |
| Franklin Volunteer Fire Dept. | $1000 |
| Surry Humane Society | $100 |
| American Red Cross | $1500 |
| Send underprivileged children to Camp AGAPE | $300 |
| Welcome View Church | $100 |
| Mt. Airy Rescue Squad | $1400 |
| Payne Chappell Church | $50 |
| My Friends' House, homeless shelter | $700 |
| Surry Friends of Youth | $700 |
| Donations to individuals with cancer | $2000 |
| Other medical donations | $1000 |
| Surry County Sheriffs' Dept. Christmas Drive for Needy Families: | |
| $2000 cash for clothes and toys | |
| Over 2000 cans of food | |
| Over 200 boxes of noodles | |
| Over 100 bags of flour, sugar, and cornmeal | |
| 100-4lb. canned hams to help feed 100 needy families | |
| Mt. Airy Salvation Army: | |
| Toys and clothes | $2000 |
| Food | 1500 cans |
| Other donations | $400 |

*Thanks to all the Bingo Players for your help and support.*

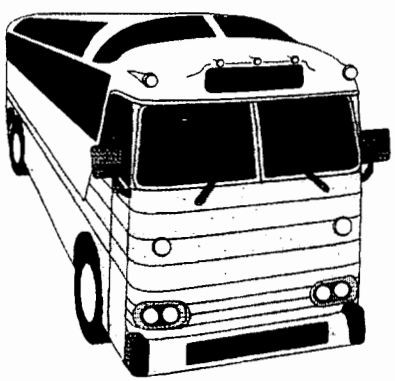
# CHEROKEE CASINO & BINGO SHUTTLE

TRIBAL BINGO
$1500 Jackpot
Evening & Early Bird Games

TEE PEE VILLAGE CASINO
Video Poker
Video Blackjack
Jackports up to
$25,000

## $25.00

**Round trip**



**Pick Up Locations & Times**

| | |
|---|---|
| Bojangles - Conover | 8:00 AM |
| J&W Cafeteria - Hky | 8:15 AM |
| Walmart - Morganton | 8:30 AM |

**Every Tuesday beginning**
**May 13th, 1997**

## HICKORY CHARTERS / TOURWAYS

## 327-TOUR or 800-853-8338

ATTN: TONY GRAVES

THIS PETITION IS to PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

1.) Michele Isaacs — 1314 Tunnel Rd. Aske, 28805
2.) Charlotte Isaacs — 1314 Tunnel Rd. Aske, 28805
3.) Jake Moore — 21 Reddick R. Askev. 28805
4.) Jane McElamery — 21 Brevard Rd 28806
5.) Donnie Stamey — 172 Johnston Blvd - 28806
6.) Darrell Carter — 6 more Kitts Pl. Candler 28715
7.) John Davis — 172 Johnston Blvd - Asheville 28806
8.) Willia Shuler — 740 Haywood Rd Asheville
9.) Kathy Shuler — 740 Haywood Rd Asheville 28801
10.) Sherena Hesseldenz — 108 Sherwood Rd. Swannanoa 28778
11.) Margaret Jacobs — PO Leicester NC 28748
12.) Sesakhin Austin
13.) Willie Jones
14.) Joan Jones
15.) Barbara Murphy
16.) monica jones
17.) christian Petitillo
18.) Charles Jones
19.) Christine Penfield — 420 Haywood St. Asheville NC 28801
20.) Brenda Hasselein — 210 Lake Eden #15 Black Mnt 28711
21.) Mindy Calloway — 210 Lake Eden #15 Blk Mt.
22.) Heleu Ellis — 665 Dupre Lane Mt. Pleasant SC 29464
23.) Susan Case — 9 laurel loop Fletcher
24.) Rosey Byrd — 9. Laurel loop Fletcher
25.) Jerry Case — 9 laurel loop Fletcher
26.) Brian Horse — 9 laurel loop Fletcher
27.) Bob Cottage — Mv NC
28.) Kaye Cottage — Maggie NC
29.) Betty Henderson — Maggie NC
30.) Jim Moore — Maggie NC
31.) Edwards Moore — Maggie NC
32.) M- Lopez — 114 Overlook Dr. - Lilan. NC

| | | |
|---|---|---|
| 33 | Rel C Lupez | 114 Overlook Way NC |
| 34 | Nyoka Limeberry | 20 Holcomb Rd. Candler NC. |
| 35 | Bonita Nicholas | Old Fort N.C. |
| 34 | Veronica Limeberry | Candler N.C. |
| 37 | Teresa Rumple | Brigad Hyw Candler NC. |
| 38 | Kathy Lovejoy | 36 CuB Rd Asheville NC |
| 39 | [illegible] | 201 Adams Hill Rd Asheville |
| 40 | Cecil Mauldin | 255 old County Rd Asheville 28806 |
| 41 | Billie Bowman | 41 Hookers Gap Rd. Leicester NC |
| 42 | Kathy Lithgo | 77 Lookout Rd. Asheville NC. |
| 43 | Barbara Young | 213 Burgin Chapel Rd |
| 44 | Barbara Arrowood | 209 State St. Aske NC. |
| 45 | Lisa Hustery | 37 Reddick Rd |
| 46 | Maysie Johnson | 2303 Wilson Rd |
| 47 | Agnes Israel | Asheville, N.C. 28806 |
| 48 | [illegible] | Asheville, N.C. 28806 |
| 49 | Francine Young | 10-A Pine Ridge apt-Arden NC |
| 50 | Emma Rogers-Durham | 82 Hanover St-Asheville NC 28806 |
| 51 | Annie Mitchell | 83 Tacoma Circle - Asheville NC 28801 |
| 52 | [illegible] | |
| 53 | Julie McNeely | 41 Orchard St. Candler |
| 59 | Marty McNeely | 41 Orchard St Candler |
| 60 | Betty Banks | 2303 Wilson Rd Asheville N.C. |
| 61 | Brady Banks | Asheville, N.C. |
| 62 | Elsie Andrew | Asheville, N.C. |
| 63 | Alice Rogers | 85 Mt. Clara Asheville |
| 64 | Sally Bell | Asheville |
| 65 | LaVerne Jackson | Asheville |
| 66 | Sherry R Kent | 67 Overlook Rd Apt # 8 Ash. NC 28805 |
| 67 | Jackie Shu | 300 Elida Road Asheville |
| 68 | Frank Wilcox | Joan Briggs. |
| 69 | Vida Wilcox | PO 884 |
| 70 | Clint Barnes | Weaverville NC 28787 |
| 71 | Thomas Adams. | |
| 72 | Glenna Shepard | |
| 73 | Tina Allen | 41 Barber Av... A... N.C. 28806 |

21

THIS PETITION is to PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

Peggy Ann Payne
692 Merrills Cove Rd
Asheville, N. C. 28803

Willmarie Payne
492 Merrills Cove Rd
Asheville N.C. 28803

Wanda Robertson 686 Merrills Cove Rd Asheville, NC 28803
Kath-Hensley 454 CEDAR LANE ARDEN 28704
Linda Edwards 1477 Patton Ave Asheville N.C. 28806
Jeff Smith 7 Wright St Canton NC 28716
Mary Gordon 507 ½ Beaverview Rd Asheville NC 28
Sara Hopper PO Box 501 Tarwren NC 28730
70 Memory Ln #5 Asheville, NC 28805
Catherine Hensley 114 Locust Ct Arden NC
Carl T. Crouse 66 Cedar Hill Rd. Asheville N.C.
Karen Davis 201 Beaumont cir Asheville, NC 28
Hillary Sweed 87 Westwood Pl. Asheville, NC 28806
Catherine Thrippe 63 Burgham Rd #9 Asheville, NC 28804
Martha Banks Asheville N.C 28801
Dena J. Stillwell 103 Atkinson St. Asheville, NC 28
Brenda Lindsey Asheville N.C 288
Andrea McIlwain Asheville NC
Robert Pearce 30 Oakwood Asheville NC 28805
Charlotte Pexley Skland NC 28776

31

THIS PETITION IS to PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

Brenda Payne - 66 8 Merrills Cove Rd. Asheville, N.C
Florence Robinson - P.O Box 5032 Ashville N.C.
Mary Sloan - 14 Pine Grove Ave Asheville N
Michael D Jackson - 669 Haywood Rd. Asheville NC 28806
Georgia Minich - 669 Haywood Rd Ash NC 28806
Gregory Watson 8 Stoner Road
[illegible] - 10 Spring Hollow Dr. Fairview
Sherena Wilson 100 Atkinson St. Ash. NC 28801
Monica Day 3 Maple Leaf Ct Ash NC 28803
Stacy White 35 Clingman Pl. 288[illegible]
Glenda Hensley 27 Kentucky Drive Asheville N,C
Noah Rice 4 Maple Street Asheville N,C
Dewey Rice 4 Maple Street Asheville N,C,
Barbara Mackey PO Box 92 Weaverville NC 28787
DELORES COOKE - 194 LOGAN AVE ASHEVILLE NC 28806
Phillip PAYNE - 194 LOGAN AVE Asheville NC 28806
Edith Cooper PO Box 753 Candler NC 28715
Rose Rice LOT 7 282 Old Fort Rd Fairview, N.C
Mary Frances Ford - 599 N. Louise 28806 28730
Cathy Sprouse 1841 Old Hwy 70 Alexander 28701
Joann Taylor 88 Merchant St Ash, 28803
[illegible] 301 Breezeway Cir Asheville NC
Lillian Johnson 7 Water St Asheville, NC 28801
Beverly Workman 3 E Indiana Ave Asheville, N.C 28806
[illegible] 29 Kenwood Rd
[illegible]
29 Kenwood Rd Asheville N.C 28806
Malina Sprouse 1841 Old Hwy 20 Alexander N.C. 28701
Kaye Cottage P.O. Box 1259, Waggoner Valley, N.
Peggy Lopez Overlook Dr. Waynesville, NC
Tonia Scotto 16 Kenwood Rd Asheville NC

28

THIS PETITION IS to PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

| NAME | Address | Ph- |
|---|---|---|
| Peggy Jaramillo | 30 Majestic Ash. 28806 | 252-5402 |
| Teresa Crane | 710 Bear Creek Rd Lester 28748 | 683-9824 |
| Paula Harwood | 12 Pearl St. Asheville NC | 253-104 |
| Millie Bastron | 7 Battery Pk Apts 1303 | 258-0643 |
| Rick Milling | P.O. Box 25242 Asheville, N.C. 28806 | 254-9859 |
| Maria Tysul | 15 Banks Ave Asheville, NC | 254-2762 |
| Lee Moore | 1600 GORMAN Red. Rd Asheville | 254609 |
| Laurent M Davis | 1 Macbeth Rd Asheville | 281-0258 |
| Helga Silver | 71 Wellington St. Asheville | 253-4128 |
| Jennifer Chapman | 5 Brown Lynch rd. Candler | 6650818 |
| Chris Carver | 5 Brown Lynch rd. candler | 665-08 |
| Ingrid Christopher | 202 Westwood Pl. Ash | 253-6073 |
| Eugenia Young | 63 Bingham Lot 62 | 252-3759 |
| Rosie Jones | 10 A Woodcrest Apts | |
| Selena Silver | 17 GEORGETOWN DR #39 LEICESTER NC | #683-9278 |
| Jerry Davis | 17 GEORGETOWN DR #39 | #683-9278 |
| JEFF SILVER | 97 Virginia Ave Apt. A. LEICESTER NC | 253-2320 |
| BETTY HONEYCUTT | RT. 1 Box 330 LOT 20 | 683-2267 |
| RONNIE PAIGE | 732 HAMWOOD RD | 258-8592 |
| Mildred Payne | Fletcher, N.C. - 28732 | |
| Angie York | 8 Veniewood Circle | Ash |
| Cheryl Robinson | 33 Avondale Heights Asheville NC | |
| Janet Owenby | - Fletcher N.C. 28732 | |
| Melody Lordman | Granada Ave Asheville N.C. | 28806 |
| Katina Johnson | Asheville NC | 28806 |
| TIFFANY LORDMAN | ASHEVILLE N.C. | 28806 |
| Jennifer B Bristol | Asheville, N.C | 28806 |
| Carlton E. Carson Sr. | Old Fort NC | 28762 |

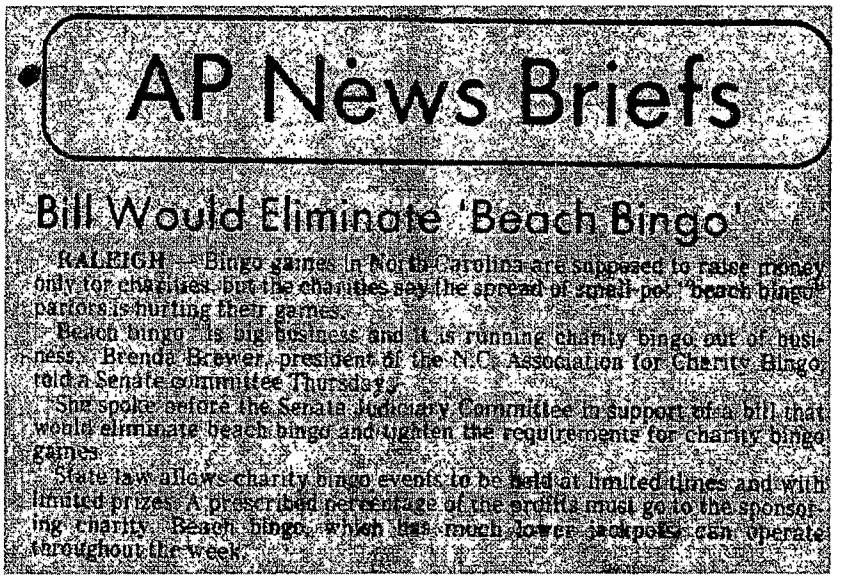
28

THIS PETITION IS to PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

| Name | Adress |
|---|---|
| Gini Dray | 125 Summer Haven Rd |
| Randy L Wilson | 49 Hunka St Asheville |
| Jack C. Foster. | |
| [illegible] | |
| [illegible] | |
| Melody Wilson | |
| Margaret Graham | 261 Virginia Ave W-Asheville NC |
| Ruth B. Ramsey | 59 Hudson St Asheville N.C. 288 |
| Ralph M Tatlock | 321 Haywood Rd Apt 4 Ash. N.C. |
| Ray & Rhonda Smith | PoBox 175 Rugby Crest NC. |
| Dana Billie Devereberry | 200 Asheville Rd Sumna |
| Louise Hall | 102 North Ave Swannanoa NC |
| [illegible] | |
| Betty Lorx | 42 Swannanoa Lumber Co |
| Michael A Smith | 137 Avondale Ridge R.d Hendl NC |
| Jeb Diaz | Swannanoa, N.C. |
| Shirley Harral | Asheville N.C. 28806 |
| Hazel Sipe | 136 Louisiana Ave |
| Ronnie Hensley | 129 Glendale Avenue Asheville |
| Mary Lordman | Asheville N.C. 28804 |
| Mary Stover | 41 Sterns Asheville NC 28801 #3 |
| Pearline Stover | 6-H Pisgah View Asheville, N.C. 28804 |
| J. D. Davis | 697 Haywood Rd. Asheville NC. 28806 |
| Jim Brown - Colby | #2 Asheville NC. 28804 |
| Lee Ann Robinson | Asheville NC. 28802 |
| Kevin Fortune | Asheville N.C. 28803 |
| Kendell Ellis | Asheville N.C. 28803 |
| Greg Ledbetter | Asheville NC. 28803 |
| Adriana Carson | Asheville NC 28801 |

THIS PETITION IS TO PROTECT BEACH BINGO. BY SIGNING THIS PETITION THIS WILL HELP BEACH BINGO, SMALL BUSINESS AND YOUR RIGHTS TO FREE ENTERPRISE.

| | |
|---|---|
| Alisha Robinson | 14- Pine Grove Ave. |
| Charles Sanders | 12 Olive St. |
| Cornelius Shands | 14- Pine Grove Ave. |
| Carolyn Logan-Chapman | 8 Pine Grove Ave |
| Delsa Tipton | 14 Foxworth Rd. |
| Renee Singleton | 13 Pine Grove Ave. |
| Pecola S. Logan | 33-F Hillcrest Apt. |
| Roberta Todd | 41 Magnolia St. |
| Joyce Sanders | 12 Olive St. |
| Florence Rastus | 14 Pine Grove St. |
| Tom Waldrop | Fairview NC |
| Richard Marston | Old Fort Rd |
| Willie Mae Smith | 8 Olive Street |
| Jean Ingle | Fletcher N.C. 28732 |
| Darlene Mitone | 136 Louisiana Ave 1754 |
| Margret Jones | Eastview Apts Asheville N.C. |
| Brenda Robinson | 129 Glendale Ave Asheville N.C |
| Bonnie Hensley | 129 Glendale Ave Asheville NC |
| Billy Robinson | 33 Avondale Heights Asheville, NC |
| Bessie Robinson | 33 Avondale Heights. Ash. N.C. |
| Sheris Oliver | 144 Logan AVE Asheville NC 28806 |
| Edith Blair | 121 South Grove St Asheville N.C. 28801 |
| Larry Davis | Asheville N,C |
| Matthew Smith | Hendersonville, NC |



AP News Briefs

Bill Would Eliminate 'Beach Bingo'

RALEIGH — Bingo games in North Carolina are supposed to raise money only for charities, but the charities say the spread of small-pot "beach bingo" parlors is hurting their games.

Beach bingo "is big business and it is running charity bingo out of business," Brenda Brewer, president of the N.C. Association for Charity Bingo, told a Senate committee Thursday.

She spoke before the Senate Judiciary Committee in support of a bill that would eliminate beach bingo and tighten the requirements for charity bingo games.

State law allows charity bingo events to be held at limited times and with limited prizes. A prescribed percentage of the profits must go to the sponsoring charity. Beach bingo, which has much lower jackpots, can operate throughout the week.

We, the owners and players of beach bingo, know that beach bingo is not running charity bingos out of business. If the charity bingo would run their bingo by the laws on North Carolina instead of trying to mix beach bingo with progressive games, five dollar winner-take-all games and a $2500 program, this would not be a problem. That is why the charity sponsors should run their own bingos. This way they will know, as well as the players, where their money is going. Beach bingo is a business and we are not fooling the people. They know you can only win $10 per game. Charity bingo is just operator against operator, one trying to outdo the other to see who can pay out the largest program.

Why don't the lawyers who represent charity bingo check with the sponsor to see how much money the operations are giving the sponsor each month to use their name? We the undersigned are here to say that we support beach bingo and the $10 games.

| | |
|---|---|
| Barbara Killian | 710 8th Ave Ct SE. 704-322-9288<br>Hickory NC |
| Linda Stewart | Hickory, NC 28602<br>4148 US HWY 321<br>Granite Falls NC 28630 |
| Carol Emmett | 4330-14 Striewalt Dr.<br>Granite Falls, NC 28630 |
| April Sanders | P.O. Box 409<br>Granite Falls NC 28630 |
| Florence Swanson | 4148 Hwy 321 A<br>Granite Falls NC |
| Teresa Mikeal | P.O. Box 331 28630<br>Granite Falls NC 28630 |
| Peggy Stringfield | North main St<br>Granite Falls 28630 |
| Melissa Stewart | P.O. Box 939<br>Hudson NC 28638 |
| April Stewart | Amanda Courts<br>Granite Falls NC 28630 |
| Charles Emmett | Falls St - Lenoir NC |
| Robert E. Hinson | Po Box 2719<br>Hickory NC. 28603 |
| Lillian Coak | 3 Cedar St<br>Granite Falls N.C. |
| Doris Sumrell | 7033 Knabe Landing |
| Lynne Sumrell | Connelly Springs, N.C. |
| Carolee Mavis | 26th ave.<br>Hickory, N.C. |
| Judy Hicks | 5355 Meadow Lane Dr. |
| Baxter Baird | Granite Falls N.C. |
| | Thomas N. Johnson |

2750 Turkey Hen Mtn. Ln. Lenoir NC 28645

Pat Crump — Rt 3 box 9 Lenoir, NC 28645

Brenda Lovins — 3008 Oaklawn Ct Lenoir NC 28645

Steve Lovins — 3008 OAKLAWN CT Lenoir NC 28645

Susan Lovins — 3008 Oaklawn C.T. Lenoir NC 28645

Virginia Brooks 2610 Cedar Ln. Hickory N.C. 28601

Ann Cole 2712 33rd Ave NE Hickory NC 28601

Linda Millsaps & William Millsaps (P.O Box 974 Hudson, NC.)

Brenda Breedlove (P. Box 974 Hudson NC.)

Lloyd Breedlove P.O. Box 737 Icard N.C.

Carol Carey

Joyce McGee P.O Box 425 Brodnax N.C.

Harriet Eller 5086 Jett Dr. New Granite

Ida Eller 2838 Highway 321A Hudson N.C.

Glenda Greene 50 West Highland Ave Granite Falls NC

Mabel Pitts 901 Harrisburg DR Lenoir N.C. 28630

Sherian White Granite Falls, N.C 27 Forest Hill Ct.

Michael Clark Granite Falls N.C.

Lilly Childers P.O. Box 706 HUDSON, NC

Judy Keller Box 442 G. Falls, NC

Joyce Brannock 1240 Brannock Smith R.D. Hickory N.C.

Ricky Presnell PO Box 1104 Connelly Springs, NC 28612

Kendra Hames 3458 Icard Dairy Brn Rd Connelly Spgs, N.C 28612

Adam Wheeler 3458 Icard Dairy Brn Rd Connelly SpSS, N.C. 28612

Agnes Kidd 2774 Twin Meadow Dr. Hudson, N.C.

Tony Calloway, Michelle Calloway — 7 West Summit Ave. Granite Falls, NC 28630

Arnold Bryant, Margaret Bryant — 3710 Wade Thompson Dr. Hudson, N.C. 28638

Loretta Long — 2401 Birchdale Dr. Lenoir

Geneva Porter — 1597 Connelly Sp. Rd Lenoir 28645

Mary Powell — 132 Cedar Ave Hudson NC 28638

Bob & Dot Holder — 3850 Holder Place Hudson N.C. 28638

Ida Billings — 255 Walt arney Est. Lenoir N.C.

Penny Hilliard — 1406 Essex pl. Lenoir N.C.

Iris Shell — 1406 Essex pl. Lenoir N.C.

Betty Craig — 1111 Virginia St. SW Lenoir NC 28

Theresa Sipes — 1115 Virginia St. SW, Lenoir, NC 28645

Jonelle Luddreth — 2719 Table Rock Rd. Lenoir, N.C. 28645

Kathy Patterson — 522 Prospect St. NW Lenoir N.C. 28645

Joseph Patterson — 433 N. Green St Morganton NC

Gloria Elliot — 1302 Piedmont Dr. NW. apt B5. Lenoir NC.

Judy Rector — 2890 Morganton Blvd #2 Lenoir NC 28645

Brenda Parson — 523 Parkwood, Lenoir N.C. 28645

Charles Lenon — 2438 Birchdale Dr Lenoir NC 28645

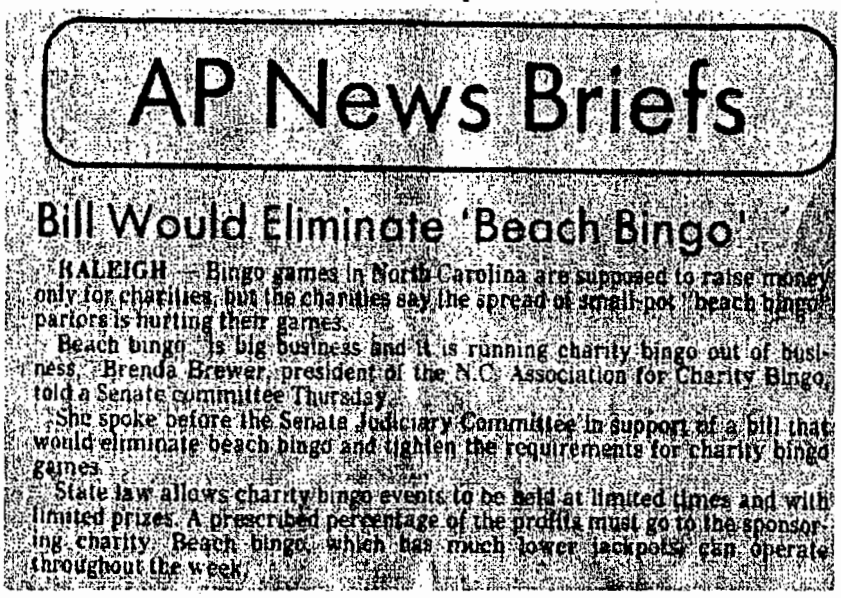
Nellie Lenon — 2438 Birchdale Dr Lenoir NC 28645

Tom Gallman — Rt 10 Box 952 lenoir NC

Carolyn McNeil — Springlake MHP Granite Falls NC 28630

Pat Harper — PO BOX 383 Granite Falls NC 28630

Joan Gallerson — 433 N. Green St Morganton N.C 28655



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Margaret McAlister
Iris Kelly
Angel Ivey
Robert Holsclaw
Jerry Crouch
Joan Baxter
Judie Hice
Vicky Barker
Joyce Miller
Robert Shell
Scott Rigby americoin author
Dawn J Rigby
Lou C Lynch 312 Abernathy St. NW Lenoir NC 28645
Janice Chester - 2470 RAINtree St. Connelly Spgs. NC
Joyce Bradshaw 140 Autumn Lane Hudson, N.C.
Connie Duckworth 3239 Elsie Caldwell St. Hildebran NC

Ellen Ellis
[redacted] Summit ave.
G.F. NC 28630

Janice Lynn
8862 Spring Meadow
Hickory NC 28601

Cleo Benfield
20 Medway St
Granite Falls, N.C. 28630

Huikacka Hadschin
1360 Dry Ponds Rd. Granite Falls

Janice Shell
3823 Grace Terrace Dr
Granite Falls N.C.

Lillian Sheets
P.O. Box 300
Hudson, N.C. 28638

Tony Millsap
78 Ash St.
Rhodhiss, NC

Toni Shull
3197 Eckerd Ch. Rd.
Connelly Springs, NC
28612

[redacted]

Brenda Young
78 Ash St.
Rhodhiss, N.C.

Bertha Gutierrez
3197 Eckerd Ch. Rd
Connelly Springs NC
28612

Lynn Laws
222 Hayes Ave C944
Hudson, N.C. 28638

Tara Hayward PO Box 639 Granite Falls 28630

Doris Riddle
PO Box 696
Hildebran NC 28637

Mike Labre 4399 Jetty Ln Hickory NC 28602

Patricia Kearney
8880 Spring Meadow
Hickory NC 28601

Jessie Breeden
P.O. Box 974 Hudson N.C. 28638

Ann Worley
807-33rd st S.W.
Hickory, N.C. 28602

Jud Reid

Jerrie Reid 5564 Quail Creek Dr. Granite Falls NC 28630

Shirley Reid 5564 Quail Cr. Dr. Granite Falls, NC.

Chris Porter 2998 Campground Road Granite Falls NC 28630

David Rector
Rt 1 Box 257
Hudson N.C. 28638

Louise Bumgarner
10 Pinewood Plaza Dr.
Apt # C - 18
Granite Falls, N.C. 28630

5-6-97

Please note <u>No!!</u> to SB "893".
Help us to keep Beach Bingo Open.
Lots of older retired people depend
on beach bingo for entertainment.
It is good, cheap, clean fun for
lots of people.

Ruth Wynne 5/6/97

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Charles Rice — 5-9-97

SIGNATURE DATE

# PLEASE KEEP

# BEACH BINGO
# VOTE NO ! !
# TO

# S B " 893 "

Lois Norris _____ 5-9-97

SIGNATURE DATE

Point — Bingo

AMVETS POST # 895
MONDAY & SATURDAY NITES
BINGO

PROGRAM
7:00 PM

RT 10, CUMBERLAND RD
STATESVILLE, NC 28677

DOORS OPEN
4:30 PM

This is what they say they are paying out

This is the pay-off

| | | |
|---|---|---|
| 1-100: | TWO CLUSTERS (IN CORNERS) | $50.00 |
| 2-100: | TWO STRAIGHTS | $50.00 |
| 3-100: | DOUBLE FOUR WAYS | $50.00 |
| 4-200: | TRIPLE FOUR WAYS 3rd # WILD | $100.00 |
| 5-100: | KITE GAME | $50.00 |
| 6-100: | LETTER "X" ( 1 # MISSING) | $50.00 |
| 7-150: | "SPECIAL" DOUBLE FOUR WAYS (NOT IN PACKS $1.00 PER CARD) | |
| 8-500: | BLOCK OF NINE IN CORNER | $250.00 |
| 9-100: | "SPECIAL" QUICKIE COVERALL (NOT IN PACKS $1.00 PER CARD) | |

BRIEF INTERMISSION

| | | |
|---|---|---|
| 10-150: | "SPECIAL" INTERMISSION GAME (NOT IN PACKS $1.00 PER CARD) | |
| 11-100: | SIX PACK | $50.00 |
| 12-100: | TWO CLUSTERS ANYWHERE | $50.00 |
| 13-300: | I-N-G ROWS | $150.00 |
| 14-100: | STRAIGHT & CLUSTER | $50.00 |
| 15-100: | TWO STRAIGHTS | $50.00 |
| 16-500: | COVERALL | $250.00 |

| | |
|---|---|
| 1 PACK | $5.00 (CHILDREN 12 & UNDER) |
| 4 PACKS | $20.00 |
| 6 PACKS | $24.00 |
| 8 PACKS | $28.00 |
| 10 PACKS | $30.00 |

EVERYONE IN BUILDING MUST PLAY BINGO

NO SPLITTING OF PACKS

704-873-8846

MONEY BALL

5-7-

They start playing $1.00 games about 4 P.M. you have to buy at least two cards - They play 5 games on a card -

at 10 til 7 PM they pull a triple at $1.00 for a 3 on sheet and pay back $200.00

after game 13 - they play a progressive game card at $1.00 for a 3 on sheet They start at 46 no. if its not hit that night you get half of whats taken in then the next night they play its goes to 48 no. for what they take in plus what they have left from last game - if not hit, Consolation 200.00 - Keep going up til hit

Then - they play a $5.00 winner take all - which on the lowest round night (usually mon.) it was $3,385.00 (4 games - bot $500.00 - one at $385.00

Plus you put your name on a list beside the desk each night for $1.00 - if you hit on one of the money back you get a large amount for that also -

# Donations for 1996

| | | |
|---|---|---|
| 1-96 | March of Dimes | $50.00 |
| 2-96 | American Red Cross (Surry County Chapter) | 2,000.00 |
| 3-96 | Surry Friends of Youth | 1,100.00 |
| 3-96 | March of Dimes | 25.00 |
| 3-96 | March of Dimes | 25.00 |
| 4-96 | M D A | 100.00 |
| 4-96 | Beulah Ruritan Club | 50.00 |
| 4-96 | St. Judes Bike-a-Thon | 100.00 |
| 4-96 | Union Cross Ruritan | 75.00 |
| 4-96 | March of Dimes | 150.00 |
| 4-96 | National Kidney Foundation | 25.00 |
| 5-96 | Caring Hands | 20.00 |
| 5-96 | My Friends House | 1,200.00 |
| 5-96 | Childrens Center of Surry Inc. | 1,500.00 |
| 5-96 | Dolphin Swim Team | 125.00 |
| 6-96 | Hodgkins Disease | 100.00 |
| 6-96 | Camp AGAPE (Kids to Camp) | 400.00 |
| 7-96 | East Yadkin Softball | 50.00 |
| 7-96 | Union Cross Ruritan Club | 100.00 |
| 7-96 | Dot Wells (Gospel Group) | 250.00 |
| 7-96 | Hospice of Surry County | 1,500.00 |
| 7-96 | Good Shepherd Program (Kids Med. Expenses) | 1,500.00 |
| 7-96 | New River Shrine Club | 50.00 |
| 7-96 | Surry County F.O.P. | 200.00 |
| 7-96 | Payne Chappel Church | 60.00 |
| 8-96 | Mt. Airy Rescue Squad | 1,500.00 |

# Donations for 1996

| | | |
|---|---|---|
| 8-96 | Dolphin Swim Team | $100.00 |
| 8-96 | Reeves Softball Center | 195.00 |
| 8-96 | Dolphin Swim Team | 100.00 |
| 9-96 | American Red Cross (Surry County Chapter) | 1,600.00 |
| 9-96 | Surry Central High School Band | 100.00 |
| 9-96 | Welcome View Church | 200.00 |
| 9-96 | Surry County Health Dept. (Baby Buckle Up) | 600.00 |
| 10-96 | Lisa Martin (widow of Greg Martin) Jonesville Police Off. | 600.00 |
| 11-96 | N.C. Sherriffs Assoc. | 20.00 |
| 11-96 | Childrens Center of Surry Inc. | 50.00 |
| 11-96 | Childrens Center of Surry Inc. | 200.00 |
| 11-96 | Union Cross Ruritan | 100.00 |
| 11-96 | Childrens Center of Surry Inc. | 300.00 |
| 12-96 | Toys-for-Tots | 805.98 |
| 12-96 | Toys-for-Tots | 527.68 |
| 12-96 | Toys-for-Tots | 204.58 |
| 12-96 | Toys-for-Tots | 582.21 |
| 12-96 | Cana Rescue Squad | 400.00 |
| 12-96 | Toys-for-Tots | 424.53 |
| 12-96 | Cana Rescue Squad | 400.00 |
| 12-96 | Toys-for-Tots | 1,039.78 |
| 12-96 | Cana Rescue Squad | 400.00 |
| 12-96 | Surry County F.O.P. | 500.00 |
| 12-96 | Cana Rescue Squad | 400.00 |
| 12-96 | Cana Rescue Squad | 400.00 |

Medical Expenses for indivuals for 1996:
$7,300.00

29,800 - 1996
plus

# 1997

MDA - 1500

Childrens Center - 1800

March of Dimes - 100

Mt. Airy Rescue Quad - 2000

Dobson Rescue Squad - 500

Surry - Stokes Friends of Youth - 400

CANA Rescue Squad - 5600

Churches - Solid Rock Church of God, Welcome View - 1400

Good Shepherd Programme - 600

AT LEAST

14.500

plus

## Speakers in Support of S.B. 893

1. Larry Bewley (NCCBA)
2. Jerry Hendrick (American Legion)
3. Betty Rowland (VFW)
4. Wally Tyson (DAV) → ~~Bill Brooks~~ John Rustin, Director of Govt. Relations, N.C. Family Policy Council
5. Brenda Brewer (NCCBA)
6. Garnet Shropshire (N.C. Veterans' Council)
7. Archie Hargett (NCCBA)
8. ~~Ashley Raper~~
9. Barbara Lineberger
10. Ed Hedgepeth (NCCBA)
11. ~~Hugh Whaley~~ (NCCBA)
12. ~~Donald J. Rhodes~~
13. ~~Archie Taylor~~ → (10)
14. Lee Bearfoot → (11) will be assigned at NCCBA
15. Mitch Baddour → 3:00 p.m. meeting
16. → (13) Coley Hunsucker

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina; to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. [illegible] | 1. 24 Conkie Rd Richland 28574 |
| 2. [illegible] Jil Sanderson | 2. 994 NC 241 Pink Hill NC 28572 |
| 3. Dana Willaford | 3. 1121 Ben Williams Rd Richlands 28574 NC |
| 4. Mable Jarman | 4. 1947 Catherines Lake Richlands 28574 NC |
| 5. Dorothy M Moore | 5. 249 Dobbs Rd #4 Pollocksville NC 28574 |
| 6. Brian L Stevens | 6. 209 Pete Jones Rd Richlands NC 28574 |
| 7. Kathleen Harper | 7. 404 Pine St New Bern NC 28560 |
| 8. Barbara Burney Beulaville NC 28518 | 8. Pauline Heath - 324-3635 |
| 9. [illegible] Beulaville N.C. 28518 | 9. Ronnie Jones 565 Beulaville Hy. |
| 10. Barbara Miller 124 Pettaway Ln Pink Hill NC 28572 | 10. Geraldine Edwards |
| 11. Clevantis Harris P.O. Box 58 Burkhead N.C. 28518 | 11. Vickie Edwards |
| 12. [illegible] P.O. Box 787 Richlands N.C. 28574 | 12. Jane Berry - Potter Hill Rd 556 |
| 13. Alice Lewis 131 Golden Rd Jax NC | 13. Johnny Berry Potter Hill Rd. |
| 14. Valerie Pollard, 461 Al Taylor Rd, Richlands, NC 28574 | 14. Doris Gray 552 Potter Hill Rd. |
| 15. Frances Mannaman 6180 Cypress Branch Rd. JAX NC 28540 | 15. Rene Jones 576 Potter Hill Rd. |
| 16. Estelle Mannan 1317 Neal Johnson Rd Magnolia NC | 16. Stan Jones 312 Erwin Town Rd. |
| 17. Myrtle Lanclerse 1315 Neal Johnson Rd Magnolia NC | 17. Lewell Nelson Jones |
| 18. Ruth Futrell 153 Turkey Hollow Lane Beulaville N.C. 28518 | 18. Jennifer Heath Fire Tower Rd. |
| 19. Sandra Faulkner Pink Hill N.C. 28572 | 19. Timothy Heath Fire Tower Rd. |
| 20. Lillie Whaley 578 Golden Hill Rd Pink Hill N.C. 28572 | 20. Sandrial Record P.O. Box 664 Beulaville |
| 21. Connie Williams 668 Wayne Forest Rd Pink Hill NC 28572 | 21. Wayne Edwards 4725 E 24 Beulaville |
| 22. Louise Myers 3160 Parker Rd Richlands | 22. Ray Coel P.O. Box 654 Pink Hill, NC 28572 |
| 23. Peggy Brent Hooker 108 Hill Richlands N.C. 28574 | 23. Glenda Coel P.O. Box 654 Pink Hill, NC 28572 |
| 24. Sandra North P.O. 1507 Richlands N.C. 28574 | 24. Ginger Edge 250 Wiggs St Richlands NC 28574 |
| 25. Willie Mulfe 128 Pettaway Ln. Jacksonville | 25. Margaret Jones Pink Hill NC RFD 1 |
| 26. Katrina Southerland 316 Broadway Dr. Richlands | 26. Annette Hayes Thompson NC |
| DAVID willaford 1121 Ben williams Richlands 28574 | 27. Linda Sanderson 1291 Comfort Hy Richlands |
| Wanda Willaford 1099 Ben Williams Rd Richlands | 28. Dale Sanderson 291 Comfort Hy Richlands |
| 29. George Willaford 1099 Ben Williams Richlands, NC | 29. Robert Lynn Sanderson 291 Comfort Hy Richlands |
| 30. Thelma LaBert 124 Pettaway Lane Lot 2 Richlands | 30. Julia Hayes PO Box Richlands, NC |
| 31. Barbara J Mills 124 Pettaway Lane Lt 1 Richlands | 31. Clara Brinson 1511 Beaulieu Rd NC |
| 32. Janice Mumford 1300 Hwy 111 Trenton | 32. Willa Brown 373 Edmund Brinson Beulaville |
| 33. Ronnie Hudson 1950 Catherines Lake Richlands | 33. Mike Brown " " " |
| 34. William Jarman 1947 Catherine Lake Richlands | 34. Michael Brown " " " |
| 35. G.A. PARKER 530 Richlands Hood Rd. Richlands | 35. Bunnie Carter Kinston NC |
| 36. Ruth Parker 530 Richlands Hood | 36. Doyle Lewis Richlands NC |
| 37. Barbara Parker 108 Bunch Lane Greenville NC | 37. Daniel Britton Richlands NC |
| 38. Larry Parker 108 Bunch Lane Greenville NC | 38. Charles H. Futrell 153 Turkey Hollow Lane Beulaville NC 28518 |
| 39. Deborah Thomas Gregory Fork NC | 39. Charlotte R. Best 156 Turkey Hollow Lane Beulaville NC 28518 |
| Brenda Langley Potter Branch Richlands | 40. Ronnie Futrell 153 Turkey Hollow Lane Beulaville NC 28518 |
| Scott Pittman Gregory Fork NC | 41. Mark Lessard 136 Turkey Hollow Lane Beulaville N.C. 28518 |
| 42. Horace Thomas Hunt Branch Richlands | 42. Timothy Futrell 1511 Beaulieu Rd Beulaville, NC 28518 |
| 43. Dimandra Thomas Hunt Branch Richlands | 43. Jason Brinson 1511 Beaulieu Rd 28518 |
| 44. Julian Sanders Comfort Rd Richlands | 44. |
| 45. Bernice Sanders Comfort Rd. Richlands | 45. |
| 46. Billy Joe Hardman 448 Ben Williams Rd. | 46. |
| 47. Diana Hardman 181 Bachelor Rd. | 47. |
| 48. Bonnie Hardman 190 Bachelor Rd. | 48. |
| 49. Kirt Pierce 1143 nine mile Rd. | 49. |
| 50. Kim Gray Fox Creek Mobile Home | 50. |
| 51. James Banks Fox Creek Mobile Home | 51. |
| 52. Melissa Gurganus Gurganus Rd. | 52. |
| 53. Jeniffe BACHELOR BACHELOR Rd. | 53. |
| 54. Michelle BACHELOR - BACHELOR Rd. | 54. |
| 55. Barbara Graham - | 55. |
| 56. Jan Green - New Branch Rd. | 56. |
| 57. Tammy Hardman - New Branch Rd. | 57. |
| 58. Doris Heath - 324-3846 | 58. |
| 59. Peggy King 2779 Kinston Hy. | 59. |
| 60. Richard King 2779 Kinston Hy. | 60. |

Bill's Beach Bingo
2289 W 5th St
Washington, NC
27889

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Suzy C. Jones - 2022 W. 5th ST Washington NC 27889<br>Sue Hamilton - P.O. Box 3 Chocowinity N.C. 27817 | 1. Walter Watson Jr. Pinetown N.C. |
| 2. [illegible] P.O. Box 840 [illegible] N.C. | 2. Denise Payton Rte 5 Box 353 Greenville, N.C |
| 3. Shelby Hennessy 1471 NC 32N Pinetown, NC. 27865 | 3. Debra Wooten 220 Jimmy Lane Wash. N.C |
| 4. Kathleen B. Hadley 416 Water St. Washington N.C. | 4. Virginia Cox 1573 Carolina Rd Wash N.C |
| 5. Kathy Jackson 1751 Hall Rd. Stanley, N.C. 28164 | 5. Minnie Payton 111 Jimmy Lane |
| 6. Doris Pope, 80[illegible] east 8th Washington NC | 6. Carolyn Wiggins Rte 5 Box 354 |
| 7. Deisha Manning 1021 Wash. St Washington NC | 7. Vanessa Peyton 1st 130 Riverroad est. |
| 8. Joey Wray 110 Village Dr. Washington N.C. | 8. Sherry Payton 1813 Hopkins Dr. Greenville |
| 9. [illegible] 403 Box Washington N.C. | 9. Beverly Foreman PO Box 162 BATH NC |
| 10. Peggy Williams 6076 Elks Rd Swiftland N.C. 27839 | 10. Charles Foreman PO Box 162 BATH NC |
| 11. [illegible] 1623 Cassier Rd Washington NC | 11. JoAnn Elzey PO Box 62 Bath NC |
| 12. [illegible] 1623 Cassier Rd Washington NC 27889 | 12. MARK Elzey PO Box 62 Bath NC |
| 13. Ina Blackwell Marjorie Bailey Washington 889 | 13. Melissa Kalcutt Pier Track Ne. York |
| 14. [illegible] PO Box 628 Chocowinity N.C. 27817 | 14. Michelle Murphy Terra Ceria Belhaven NC |
| 15. Shelby Taylor P.O. Box 641 Chocowinity NC. 27817 | 15. Dawn Hoadley Terra Ceria Belhaven NC |
| 16. Griffin Thrift P.O. Box 641 Chocowinity N.C. 27817 | 16. Frances Foreman PO Box 32 Pantego |
| 17. Geraldine Moore. 409 Hudnell St. Washington 27889 | 17. Wendy Hewith 5 Lakestown Rd. Wash. NC |
| 18. Ray Jones 407 Hudnell St. washington 27889 | 18. EVA Jessett Jamesville NC |
| 19. Bashet Havens Whichards Beach Road chocowinity | 19. Preston Koonce Rt 1 Bath, N.C. |
| 20. Melinda Moore - Moore's Lane Chocowinity 27817 | 20. Teresa Tooley Pinetown NC |
| 21. Donna Newman Adams St. Chocowinity 27817 | 21. Mike Elzey Burbage X Roads Belhaven NC |
| 22. Allen Boyd - P.O. Box 338 Chocowinity 27817 | 22. Ruth Hewith Rt 1 Bayview NC |
| 23. Peggy Edwards - 1675 Chocowinity 27817. | 23. Nancy Jefferson Chocowinity NC |
| 24. Clay Boyd - Belhaven NC. | 24. BARBARA Lisood Wash. Park Wash. |
| 25. Buddy Moore - whispering pine Road Washington 27817. | 25. Mike Norman Chocowinity NC |
| 26. Juanita Bright - Moore's Lane Chocowinity | 26. Amanda Norman Chocowinity NC |
| 27. Tracey Gray - Adams St. Chocowinity 27817 | 27. Betty Elzey Burbage X Rd Belhaven |
| 28. Andy Roberson Adams St Chocowinity | 28. Ann Ratliff Pantego, NC |
| 29. Sheila Taylor Aurora NC. | 29. [illegible] Molly |
| 30. Mary Wilson - Washington N.C. | 30. Wilma Gurley |
| 31. Angela Holland Plymouth | 31. Claudia Lidgehty |
| 32. [illegible] | 32. William S. Leighty |
| 33. Marie C. Swindell | 33. Angela Murphy |
| 34. Stanley T. Cuffy 1107 Virginia Circle | 34. Steve Blake Greenville |
| 35. Bobbie Tenton 723 E 13th St | 35. Aimee Knappay Greenville |
| 36. [illegible] 718 Hudnell St | 36. Geoff Saffell Greenville |
| 37. Ruth Hill 306 Maple Lane Washington NC | 37. William Liles Greenville |
| 38. Pat Ross 713 Sandy Acres Lane Washington NC. | 38. Angie Osbing Greenville |
| 39. [illegible] 7749 US 264 E Washington NC 27889 | 39. Shelly Costner Greenville |
| 40. James A. Boyd 16752 NC 32N Pinetown, NC 27865 | 40. Ken Jones Goldsboro |
| 41. Anne Lewis 919 Runyon Rd Wash. N.C. 27889 | 41. Myrna Jones Goldsboro |
| 42. Lee Jones 405 Chapelle St Wash NC 27889 | 42. Andrew Aycock Greenville |
| 43. [illegible] Rt 11 Greenville NC | 43. Jimmie Boyd Washington |
| 44. Ulysses Frazier Rt 4 Greenville NC | 44. Casey Jones Goldsboro |
| 45. Tammy Carden 313 Plum Dr. Wash. N.C. 27889 | 45. [illegible] |
| 46. Regina Pimienta 4071/2 7th Street Wash NC. 27889 | 46. [illegible] |
| 47. Joanne M. Boyd 3340 Harvey Rd Wash. NC | 47. [illegible] |
| 48. Office Shipyard 264-EST | 48. [illegible] |
| 49. Steve Hater Rt. 3 Box 208 Greenville, NC. 27834 | 49. [illegible] |
| 50. Linda Rodgers 229 Quad St Washington NC 27889 | 50. [illegible] |
| 51. Glenda Sanders 75 Cypress Acres Wash. N.C. | 51. [illegible] |
| 52. Shirley Holden 13 Hassell Washington N.C. | 52. [illegible] |
| 53. Manuel Carpello 101 Glenview Dr. Washington, N.C. | 53. [illegible] |
| 54. Mary Carpello 101 Glenview Dr. Washington, N.C. | 54. [illegible] |
| 55. Walter Jones 123 Bonner Plest Wash. | 55. [illegible] |
| 56. Barbara Norman Plymouth N.C. | 56. [illegible] |
| 57. Dorothy Scott | 57. [illegible] |
| 58. Katanya Davis | 58. [illegible] |
| 59. Ruth Haddock 300 River Creek Wash NC | 59. [illegible] |
| 60. Hattie M. Rouse #338 Market St Ext. Wash. N.C. 27889 | 60. [illegible] |

Bill's Beach Bingo
2289 W 5th St
Washington NC

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 093 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Bessie Lynn Watson | 1. |
| Thelma Hyatt | 2. |
| Latricia A. Wilson | 3. |
| 4. Thomas E. Colvin | 4. |
| 5. Thomas E. Wilson | 5. |
| 6. Tashonda N. WILSON | 6. |
| 7. Mattie Cobb | 7. |
| 8. Mae Godley | 8. |
| 9. Jaycey Anderson | 9. |
| 10. Cliffie Anderson | 10. |
| 11. Doris Sherrill | 11. |
| 12. Crystal Blackledge | 12. |
| 13. Brendan Cobb | 13. |
| 14. Gail Pugh | 14. |
| 15. Maxine Sailberry | 15. |
| 16. Nina Rogers | 16. |
| 17. Daisy Jordan | 17. |
| 18. Stephanie Rome | 18. |
| 19. Ruby Bousquet - Washington | 19. |
| 20. Cassie Cobb | 20. |
| 21. Elsie Pugh | 21. |
| 22. Barbara Allsopp Chocowinity | 22. |
| 23. Ruth Allsopp Washington | 23. |
| 24. Janet D Miller | 24. |
| 25. Calvin Bayliff | 25. |
| 26. Tameiya Davis | 26. |
| Tameiya Jones | 27. |
| Shirley B Henderson | 28. |
| 29. Donny Kinlaw | 29. |
| 30. Karen Beacham | 30. |
| 31. Sharon Bland | 31. |
| 32. Frances Carrico | 32. |
| 33 Robert Carrico | 33. |
| 34. Mary S Frye | 34. |
| 35. Shirley Rouse | 35. |
| 36 Pat Whitlock | 36. |
| 37. John A Williams P.O Box 334 Grimesland, N.C. | 37. |
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| 60. | 60. |

ARLINE'S BEACH BINGO - WILLIAMSTON N.C.
501 WEST MAIN ST. 27892

April 17, 1997

To the N.C. Senate Committee :

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I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

Signature & Address

1. William A. Barnes 1378 Rodney Rd Greenville NC
2. [illegible] 105 E 11th St Greenville
3. [illegible] Williamston, NC.
4. [illegible] Jamesville
5. Kim Phelps Williamston
6. Mike Phelps Williamston
7. Dean Phelps Williamston
8. Tina Johnson Robersonville
9. Clark Janet Williamston
10. [illegible] Williamston N.C.
11. [illegible] Williamston N.C.
12. Helen Keel Williamston N.C.
13. Marvin Keel Sr. Williamston N.C.
14. Pearl O Mary Williamston N.C.
15. Mary Reynolds Jamesville NC.
16. Emmit Reynolds " NC.
17. Donna Reynolds " NC.
18. Donna Wynn "
19. Trish Wynn "
20. Freddie Wynn "
21. Velma Rogers Williamston NC.
22. Paul C. Pope Williamston N.C.
23. Tammy Rodgers Williamston
24. Noel Wiggins Williamston
25. Brandy Wiggins Williamston
26. Jonetta Wiggins Williamston
27. Priscilla Bond Hamilton NC
28. Progenett Bunch Windsor NC.
29. Ebonya Bond Windsor NC.
30. Winnler Bond Windsor NC.
31. Dallie Bazemore Williamston
32. Debra Brown Williamston
33. Debra Davis Williamston NC
34. Clayton Davis Williamston NC
35. Kenbrit Brown " "
36. Tonya Brown " "
37. Matilda Barbware " "
38. Keisha Cook
39. Patrick William s
40. Michelle Hardy Winston
41. Lenard Hardy Sr Williamston
42. Carol Coleman Jackson
43. Jeff Coleman Jackson
44. Chris Keel Williamston
45. Erin Moody Williamston
46. Marvin Keel Jr Williamston
47. Grace Keel Williamston
48. Ruth Peade
49. Phillip Peade
50. Frankie White
51. Jim White
52. Charlesie English Williamston
53. Emma Jenkins
54. Cheryl Raymore
55. Jerry Raymore
56. Kristy Light
57. Brooke Light
58. Sherry Burns
59. Joan Bacon
60. Cassie English
Lexlon Stewart

Signature & Address

1. Bobbie W. Holloman 104 Martin Ave Williamston
2. Raymond M. Holloman 104 Martin Ave Williamston
3. [illegible]
4. [illegible] 1907 Bear Trap Rd
5. Marilyn Slocum 1907 Bear Trap Rd
6. Frederick Rodgers 1907 Bear Trap
7. Antonia Goyette Rodgers 1907 Bear Trap
8. Bobby Williams, Williamston, NC
9. Tamikia Plant PO Box 411 Plymouth, N.C.
10. Velma Simpson, 107 Ridgeway Dr. Plymouth,
11. Michael Walker 209 Ridgeway Dr. Plymou
12. Alice Clark, Roper, N.C.
13. Beverly Arnold, Jamesville, N.C.
14. Latonya Allen 908 South King St. Windsor, NC 2798
15. Dorothy Bell 315 Morning Rd. Windsor, NC 2798
16. Tisha Allen 114 Spruill Pk. Lane Windsor 2798
17. Nellie Roscoe 113 Spruill Pk. Lane Windsor NC 2798
18. Sheila Craig Windsor NC 27983
19. Ran Craig Windsor NC 27983
20. Keisha Bell Windsor NC 27983
21. Dallas Purvis Williamston N.C. 27892
22. Priscilla Purvis Williamston NC. 27892
23. Mary Knight Hassell N.C.
24. Mary Purvis Oak City N.C.
25. Albert Purvis Williamston NC
26. Latonya Knight Hassell NC
27. Darlene Norman Plymouth NC
28. Laura Stalls Plymouth NC
29. Chris Toddie Plymouth NC
30. Mary Brown Hassell, NC
31. Keshia Brown Hassell, NC
32. Keshia Freeman Williamston NC
33. Rose Wiggin Oak City NC
34. Linda Silver Oak City NC
35. Santee Holley Robersonville
36. Curtis James Robersonville NC.
37. Possenger Freeman Bertie N.C.
38. Larry Dalbert Tarboro
39. Doris H. Wiggins 512 E. Church St. Williamston
40. Stanley Purvis Williamston NC
41. Jessie Dickens Robersonville, NC
42. Queenie Langley Oak City, NC
43. Cynsantha Brown Williamston, NC
44. Edna Goss Williamston N.C.
45. James Keith Mizelle Williamston, NC
46. Angelle Mizelle Williamston NC
47. Lucy Mizelle Everetts, N.C.
48. Sarah Moore Williamston NC
49. Anthony Peele
50. James J Rodgers Williamston
51. Irma Peade Jackson
52. Lyn Peade Jackson
53. Kitty Perry Williamston
54. Emily Mizelle Williamston
55. Loretta Gaither Jackson
56. Janet Pollock Williamston
57. Hoyt & Roberson Williamston N.C.
58. Lovonia Bell Williamston
59. Kenneth Cuthrell Williamston NC
60. Lynn Williams Williamston N.C.
Mendee Langley
Loretta Bell
Jessica Langley

ARLINES BEACH BINGO WILLIAMSTON
501 WEST MAIN ST-

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

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| Signature & Address | Signature & Address |
|---|---|
| 1. Carolyn Beach Williamston | 1. Viola Bullock Robersonville |
| Audrey Christie | 2. Ruby Clark |
| 3. | 3. Willie Coons |
| 4. Bobby Hadley | 4. Martenia Clark |
| 5. Shelbie Mitchell | 5. Jocelyn Clark |
| 6. Theresa G. Swain | 6. Sandra Earl Faulk Roper |
| 7. Linda O. Sullivan | 7. Shawn Lacey Plymouth |
| 8. Spencer A. Jennings | 8. Alice Lutwiley Plymouth |
| 9. Gregory Mabe Robersonville | 9. Susan Lacey Plymouth |
| 10. Reed Mobley Robersonville | 10. Susan Lacey Plymouth |
| 11. Hubert Lanchey Robersonville | 11. Margaret Ostew Windsor |
| 12. Debbie Tyndone Robersonville | 12. Millicent Mitford Windsor |
| 13. Walter Hoff Robersonville | 13. Deborah Smith 1325 Penn St. Wms. No. NC |
| 14. LEON EARL BEACH - Robersonville | 14. Katherine Williams 108 Lanier St. Williamston |
| 15. Mildred Walker Creswell NC | 15. ANGELIA BOSTON P.O. BOX 1351 |
| 16. Troy Sutton Creswell NC | 16. Gwen Hyman Hyman Street |
| 17. GLENN WEBB GREENVILLE | 17. Adele Rogers Robersonville NC |
| 18. PAMELA WEBB GREENVILLE | 18. |
| 19. Pauline Purvis Williamston | 19. |
| 20. Ella Jordan Williamston | 20. |
| 21. Bettie Purvis Williamston | 21. |
| 22. Anna Woolard Williamston | 22. |
| 23. Pirlene Robertson Williamston | 23. |
| 24. Audrey Jordan Williamston | 24. |
| 25. Vinson Purvis Williamston | 25. |
| 26. William Jordan Williamston | 26. |
| Alice Lee Coles Williamston | 27. |
| John Cooper Williamston | 28. |
| 29. Barbara Woolard Williamston | 29. |
| 30. Donna Coles Williamston | 30. |
| 31. Bettie Purvis Williamston | 31. |
| 32. Peggy Hollon Williamston | 32. |
| 33 Hazel Peebles Williamston | 33. |
| 34. Melissa RP Bullock Williamston | 34. |
| 35. Robin Powell " | 35. |
| 36. Tom Poston " | 36. |
| 37. Alice Nash " | 37. |
| 38. Linda Gardner " | 38. |
| Ray Poston " | 39. |
| Robert T. Smallwood Windsor | 40. |
| 41. Alice C. Blount Plymouth | 41. |
| 42. Liz C. Jones 2022 W. 5th St | 42. |
| 43. Melvin E Jones 2022 W. 5th St | 43. |
| 44. Barbara Bullock | 44. |
| 45. Jerry Wilson | 45. |
| 46. Sherrone Wilson | 46. |
| 47. Monique Wilson | 47. |
| 48. Ahmon Wilson | 48. |
| 49. Sherrone Rodgers | 49. |
| 50. [illegible] | 50. |
| 51. Katie Lee Tyndall 1691 Buggins Rd Winston | 51. |
| 52. Donnell Bonner | 52. |
| 53. Patricia Bonner | 53. |
| 54. Jenny Wynn 1130 Leggett Mills Rd Williamston | 54. |
| 55. Thomas Wynn " " " | 55. |
| 56. Katina Halliday 505 Park St. Apt 23 Williamston | 56. |
| 57. Jerry Halliday " " " " | 57. |
| 58. Ruth Perry Williamston | 58. |
| 59. Donna Shaw Robersonville | 59. |
| 60. Charles Shaw Robersonville | 60. |

Jeff's Beach Bingo
Havelock NC 28532

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

Diane R. Korecky
406 Forest Hill Dr.
Havelock NC 28532

| Signature & Address | | Signature & Address | |
|---|---|---|---|
| 1. | Lorraine Ipsen 207 N. Nunn Havelock | 1. | 39F Pintail Ct, Havelock NC |
| 2. | | 2. | 701 Mullins Havelock NC |
| 3. | | 3. | 300 Ratner Blvd Havelock |
| 4. | | 4. | Morehead City |
| 5. | Bettie Chadal | 5. | |
| 6. | EUNICE MULLINS P.O.Box 818 NEWPORT | 6. | Raleigh |
| 7. | DAVID MULLINS P.O Box 818 Newport | 7. | |
| 8. | Andrea Clark POB 209 Havelock | 8. | Newport |
| 9. | Betty Webb 114 Carol Dr. Havelock | 9. | |
| 10. | Daisy Kelly 124 Sherwood Havelock | 10. | |
| 11. | Dora Morrison 128 Bryan Cir. Havelock | 11. | |
| 12. | Sarah Jordan 91 Jackson Dr Havelock | 12. | |
| 13. | Ann Mohr 5 Central Havelock | 13. | |
| 14. | Lori Butler 212B Forest Hill Dr. Havelock | 14. | |
| 15. | Wanda Gueski 161 Dusty Trail Newport | 15. | Henderson Havelock |
| 16. | Robbie Brewer 925 Ramsey Rd. Jacksonville | 16. | |
| 17. | Mona Bush 478 Chatham St. Newport | 17. | |
| 18. | [illegible] 220 Shipman 2d 28532 Havelock | 18. | |
| 19. | [illegible] 269 N Nunn Havelock | 19. | |
| 20. | [illegible] 329 Rogue Pines Newport | 20. | Newport. |
| 21. | [illegible] 70 Gates Rd Havelock NC | 21. | N.C. |
| 22. | [illegible] 200 [illegible] Havelock | 22. | Beaufort NC. |
| 23. | [illegible] 522 [illegible] Havelock | 23. | Newport NC |
| 24. | Mark Ellis Newport | 24. | 450 Pine Ct |
| 25. | J.C. Ellis Newport | 25. | Cherry Point |
| 26. | [illegible] Havelock | 26. | |
| | [illegible] Havelock | 27. | Jacksonville |
| | [illegible] Harbors Blvd | 28. | Hampton Havelock |
| 29. | Carla Ellis Newport | 29. | |
| 30. | Jeanie Bulwer Newport | 30. | Cherry PT. |
| 31. | Jenny Pickard Havelock | 31. | |
| 32. | Maid Mendelson Cedar Island | 32. | |
| 33 | Jordan Ellis Havelock | 33 | |
| 34. | John Payne Havelock | 34. | |
| 35. | [illegible] Havelock | 35. | |
| 36. | Raimond Pollak Newport | 36. | |
| 37. | Linda Pollack Newport | 37. | |
| 38. | Buddy Pollack Newport | 38. | |
| | Bob Hobgoodberts Havelock | 39. | Havelock |
| | [illegible] Havelock | 40. | |
| 41. | Donna Compton Newport | 41. | |
| 42. | Shirley Smith Newport | 42. | |
| 43. | Rose Smith Havelock | 43. | |
| 44. | [illegible] Zerger | 44. | |
| 45. | Derek Biddle 777 Falcon Rest Circle | 45. | |
| 46. | Joseph Ugale | 46. | |
| 47. | [illegible] Bear Pines | 47. | |
| 48. | [illegible] | 48. | |
| 49. | [illegible] Greenville | 49. | |
| 50. | [illegible] | 50. | |
| 51. | [illegible] Greenville | 51. | |
| 52. | [illegible] Havelock | 52. | |
| 53. | [illegible] Columbia S.C. | 53. | |
| 54. | [illegible] Wilmington | 54. | |
| 55. | [illegible] | 55. | |
| 56. | [illegible] | 56. | |
| 57. | [illegible] Jacksonville | 57. | |
| 58. | [illegible] New Bern | 58. | |
| 59. | [illegible] Morehead City | 59. | |
| 60. | [illegible] Newport | 60. | |

Players Bingo
Kinston, N.C.

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

Signature & Address

1. Bridgette Coleman Kinston
2. 2105 Cedar Lane Kinston N.C. 28501
3. Marvelle Moore 2019 Brightfield Rd. Kinston
4. Mildred Tolston Kinston
5.
6. Jason Smith 101 Dixon St. Kinston
7.
8. RT 1 Box 175F Hookerton
9.
10. 403 Warren Ave.
11. Lloyd Moody 2910 W. Vernon Ave
12. Martha Mills
13. 2503 Camden Kinston
14. Christie Hill Grant 5006 Neuse Rd Kinston
15. Kinston, N.C.
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30. Mary Alice Edwards
31. Melissa Edwards
32. Pauline Shivers
33. Vicky Edwards
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Signature & Address

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18. 356 N.C. 11 E. Pink Hill 28572
19.
20. Cathy Carr Kinston Rt 1
21. Brooke Hill Rt 1 Kinston
22.
23. Jimmy Hill Rt 1 Deep Run
24. Kinston Rt 2
25.
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33.
34. Tina Moore - 664 Hines Ave - Kinston
35.
36. Jackie Rt 1 Kinston
37. 5-F Simon Pk Apts.
38. 301 Pine Rd
39. 2511 Ewarth Dr.
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rent Close Our Beach Bingos

1. James Brockett
2. Sue C. Brockett
3. Clio Suggs
4. Ann Streetz
5. Jared Baker
6. Patricia Plymell
7. Judy Jones
8. Dudley Jones
9. Laurie Pope
10. Mary Woodrick
11. Malcolm Johnson
12. Karen Edwards
13. Archie Sheffield
14. Carol Gray
15. Mamie Gray
16. Mk Cunningham
17. Delores Cuming
18. Cyd M Cagle
19. Pam Lee
20. Michelle Davis
21. Alicia M. Gilchrist
22. Dallas Smith
23. Sandra Carson
24. Candy Webb
25. Darell Wells
26. Dave Dean
27. Benita Hathaway
28. Mickey Dean

30. Curtis Hewett
31. Denise Jones
32. Betty Ormond
33. Joshua Davis
34. David Jones
35. Frank Jones
36. Randy Harrell
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Patti's Beach Bingo
2500 TRENT Rd
New Bern, N.C.
28560

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Jeff Andrews 2A Mulberry Lane New Bern NC 28562-8922 | 1. Harvey m Hill 2800 Oakland Ave New Bern NC 28560 |
| 2. Joyce DeLaHyde 2 A Mulberry Ln. New Bern 28562 | 2. Linda Hill 2800 Oakland Ave New Bern NC. 28560 |
| 3. Shirley C Turnbull West Bern | 3. Caroline Martin 30 Casey Rd New Bern NC 28562 |
| 4. 500 Sterling Point Rd | 4. Daniel Martin 30 Casey Rd New Bern, NC 28562 |
| 5. Loretta Mann P.O. Box 562 Bayboro, NC 28515 | 5. Joyce Garris 8ST Bridgeton, NC 28576 |
| 6. Jeannette Dudley P.O Box 81 Bayboro NC. 28515 | 6. Pamela Singleton 500 Sanders lane New Bern NC 28562 |
| 7. Joan Dettyman 550 Aurora Ernie 28527 | 7. Steve Snipes - Marshall St Roanoke Rapids NC |
| 8. Patti may Haynes 1107 Antioch Rd New Bern, NC 28560 | 8. Celestine Green |
| 9. Robert Allen II 398 Old Vanceboro Rd. New Bern 28560 | 9. Eddie Arthur 395 Lee's Chapel Rd. Pikesville, NC |
| 10. Marcia Davis 348 OLD VANCEBORO RD NEW BERN 28560 | 10. Ellen Huntington 1413 Old Cherry Pt. Rd New Bern, NC |
| 11. Brenda Brown 708 Bern St. New Bern NC | 11. Rachel Wick 1903 Hartford Ave New Bern NC |
| 12. Velma Credle 8972 NC Hwy 304 Bayboro NC 28515 | 12. Bleapl PATTE'S open Freda Jones P.O.Box 13951 New Bern NC |
| 13. Betty Nefley 119 Mitchell Bayboro NC, 28515 | 13. Kim GROSE - 1012 OLD CHERRY PT RD New Bern NC |
| 14. Virginia Lattee 3001 Holsteins Dr. New Bern N.C. | 14. Ellen Shore, 479 Masontown Rd, Newport NC 28570 |
| 15. Sadie Cahoon 2821 Glenn Blvd Ext #39 New Bern NC | 15. Bill Shore, 479 Masontown Rd, Newport, NC 28570 |
| 16. Hazel Mewborn 906 Clarke Dr. New Bern NC. 28560 | 16. DALLAS BROWN JR 101 Julia Lane Vanceboro N.C. |
| 17. William Johnson 2305 Carolina St. NBNC 28560 | 17. Peggy Dixon 115 Lichyer Lane Vanceboro N.C. |
| 18. William Clayton 2305 Carolina St. NB, NC 28560 | 18. Kerry Thompkins 803-A Neuse Drive New Bern NC 28560 |
| 19. Velma Jackson 1005 Old Cherry Pt Rd NB. NC. 28560 | 19. Jessica M. Evans 192-214 Brent Ct New Bern NC 28560 |
| 20. Sherry Lamb 2200 Cedar Ave New Bern | 20. [illegible] |
| 21. Becky Mitchell 2204 Center Ave New Bern NC 28560 | 21. Marilyn Baskins 1407 Hazel Ave. N.B. |
| 22. Debra M Taylor 526 Walker Ave. New Bern, NC | 22. Margaret Inman 1405 Hazel Ave NB. |
| 23. Janice B. Halford #219 2821 Neuse Blvd New Bern 638-5914 | 23. Jackie Stowe 1012 Cherry Pt Rd New Bern |
| 24. Louise Hyde 224-0643 | 24. Dod Roper Old Cherry Pt. Rd. New Bern, NC |
| 25. Wendy Stallard New Bern NC | 25. Carla Hagan 182 Hill Dr Grantsboro NC 28529 |
| 26. Billy Brown 101 Julia Lane Vanceboro N.C. 28586 | 26. Vanessa Combs 449 Foxchase Vlg New Bern |
| 27. Randy Hardison | 27. Vanda Griffin 1151 Trenton NC |
| 28. Randy Hardison | 28. Ronnie Nobles 1710 Gardner st New Bern |
| 29. Vida Austin | 29. Debra Sheary 1706 Gardner St. New Bern |
| 30. Nancy D. Singleton 500 Sanderstone New Bern 28562 | 30. Gloria Whitfield 1035 Plymouth Dr. |
| 31. Michael Singleton " " " | 31. Judy Bertrand 1004 Tatum Dr. NB 28560 US |
| 32. Jane E. Lindsay 814 Clark St. New Bern, 28560 | 32. Lloyd Bennett Norman. Ruby Rt #2 |
| 33. Sheila Singleton 500 Sanderstone " " " | 33. Judy Hogan West Bern Ave New Bern |
| 34. Marion Warren Santa Fe, Penn. | 34. Alex Monlenton 5 Douglas Dr New Bern |
| 35. Barbara Webb Richmond, Va. | 35. Chris Lawson 5 Douglas Dr New Bern |
| 36. Elaine Lynch Jacksonville, Va. | 36. Albert Brunson 1405 Red Pine Ln New Bern |
| 37. Donald Romanowski P.O. 578 Jenkinton N.C. | 37. Shirley Hall New Bern |
| 38. Doris L. Stroud 402 Old Vanceboro New Bern NC | 38. Margaret Dawson New Bern |
| 39. Margaret Walker 1910 Elm St New Bern NC | 39. Andrew Drew New Bern |
| 40. Rosella Wilson 2406 Country Club Rd Apt 14 | 40. Vanessa Combs New Bern |
| 41. Carlen Cuthrell 1315 Roberts Rd. Dover, N.C. 28529 | 41. Cora Gleason New Bern |
| 42. Alice Swaney 607 Foxchase Vlg New Bern N.C. 28562 | 42. Judy Raspberry New Bern |
| 43. Sandra D Powell 3002 Tuscarora Dr NB NC | 43. David A Drew Jr. New Bern |
| 44. Cheryl M Franklin 1903 Wilson St. NB, NC 28560 | 44. Johnnie Franks Jr New Bern |
| 45. C. LaVoie 1903 WILSON ST. NEW BERN, NC 28560 | 45. James Parkins 816 Westbl. New Bern |
| 46. Pearl White Pollocksville N.C. 28573 | 46. Wanda Grey |
| 47. Ella White Pollocksville N.C. 28573 | 47. Joyce Palmer New Bern N.C. |
| 48. Joyce Gaskill | 48. STEVE HAMILTON NEW BERN |
| 49. [illegible] New Bern NC. 28560 | 49. Angela Walker New Bern |
| 50. [illegible] N.C. 28560 | 50. Shannon Guice 502 Antioch Rd. New Bern |
| 51. Eleanor Cartrette P.O. Box 12715 New Bern, N.C. 28560 | 51. |
| 52. Doug Bennett P.O Box 14116 New Bern | 52. |
| 53. Judith R Jones 3605 Canterbury Rd New Bern NC 28562 | 53. |
| 54. Tammy Jennings 1350 Trent Blvd. Apt H3 NB, NC 28560 | 54. |
| 55. Patti Campbell 1005 Old Cherry Pt. Rd New Bern | 55. |
| 56. Marke Gaskin Clayton New Bern N.C. 28560 | 56. |
| 57. Beth Ritts Montgomery Ala 31139 | 57. |
| 58. Mary Anne Wagner Wallace N.C. | 58. |
| 59. Freida Haynes Wallace N.C. 2 | 59. |
| 60. Linda D Davis Ct 246 Craven Terrace NB NC 28560 | 60. |

April 17, 1997

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Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. James Steinberg 222 W. Salwood Jacksonville N.C. | 1. Sylvia Williams 204 Carolina Dr. |
| 2. Sandra Lauria 1031 Springville Rd Jax. | 2. Mat Glanowska 1291 Ob Maple Dunes Rd |
| Sandra Ingham 156 Ernest Gurganus Rd #25 Jax NC | 3. Melissa Fine 528 Holly Shelter Rd Jax NC 28540 |
| 4. Barbara Montgomery 122 Riverside Hwy Jax N.C. | 4. Esther Nelson 524 Holly Shelter Rd Jax NC |
| 5. America Hamilton 1120 Ox Creek Rd. Jax NC. | 5. Alice Rodgers 103 New R. Rd Dr |
| 6. Anna Hall 4 Newell St Jax N.C. | 6. Patricia Phifer |
| 7. Sara M. Jones 180 Onslow Dr Jax N.C. | 7. J.J. Jones 402 Aragona Blvd Jax NC |
| 8. J. Bourke 156 Ernest Gurganus Rd Jax NC | 8. Amanda Phillips 527 Holly Shelter Rd Jax NC 28540 |
| 9. Annette Barber 414 Singletree Ct. Jax, NC | 9. BS Brackshaw 156 Ernest Gurganus Rd #25 Jax NC 28540 |
| 10. Joe McCue 4 Newell St Jacksonville, NC | 10. William Byrd 1121 Haw Branch Rd Beulaville, NC. |
| 11. Mary Jo Adams 1240 Old Maplehurst Rd. Gville, N.C. | 11. Janet M Green 1121 Haw Branch Rd Beulaville, NC |
| 12. Cynthia Hunt 91 Balsam Rd Jacksonville, NC | 12. Peggy Weber 7831 Old Statesville R. Chas. N.C. |
| 13. Wona Jones - 402 Aragona Blvd. | 13. Jack Duncan 156 Ernest Gurganus Rd (at #15 Jax NC |
| 14. Julie Daffron 17 Edith Dr. Jax N.C. | 14. Helen Moore 1005 Furia Dr Jax NC |
| 15. Mildred Thompson - Maple Hill N.C. | 15. Daniel Jones 402 Aragona Blvd Jax NC |
| 16. Claudine Jerrell - Burgaw NC. | 16. Judith P. Hand |
| 17. Frances Hand - Burgaw NC. | 17. Sonya McClellan 7100-9 Ernest King Rd |
| 18. Lula Hand - Burgaw NC. | 18. Donnie O. McMickens 760-9 Ernest King Rd |
| 19. Marie Thompson - Burgaw NC. | 19. [illegible] 201 President Jax |
| 20. Laurence Jerrell - Teachey NC. | 20. Sara Maginnis 12431 C Rd. Midway Park 28544 |
| 21. Bleau Hand Jr - Wallace NC. | 21. Robert Davis 111 Townsend Pl. Jacksville NC 28540 |
| 22. Leon Mason - Wallace NC. | 22. |
| 23. Elaine McCoy 111 Yamilla Ct. #1 S.J. NC. | 23. |
| 24. Jacqueline Lyncee - Dyke Teachey NC. | 24. |
| 25. Kenneth Adams Jacksonville NC. | 25. |
| 26. Maria Schwendemann, Jacksonville, N.C. | 26. |
| Kim [illegible] 200 Shadowell Dr. Jacksonville NC | 27. |
| Vesta Van Dyke 301 Gibson Rd Jacksonville NC | 28. |
| 29. [illegible] 206 Hill St Jax NC | 29. |
| 30. Gail O. McHue 760-18 Ernest King Rd NC | 30. |
| 31. Barbara Lindig 760-18 Ernest King Rd NC | 31. |
| 32. Judd Jones Surveying 522 N. Spruce St. Jacksonville, NC | 32. |
| 33. Patricia W. Mozingo 7502 Country Club Dr Jacksonville, NC. 28540 | 33. |
| 34. Bessie C. Vaughan 1472 Onslow China Rd. Jax, N.C. | 34. |
| 35. Henry Seeley 124 Bumpy Creek Rd Swansboro 28584 | 35. |
| 36. Cassandra Kinney 113 Lucky St. Snead's Ferry | 36. |
| 37. Nancy Overcash 150 Bailey Dr Jacksonville, NC 28540 | 37. |
| 38. MARK LAURIA 1031 SPRINGVILLA DR JAX, NC | 38. |
| Donald Graham 156 Ernest Gurganus Rd #25 JAX NC | 39. |
| CRYSTAL EDWARDS 1031 SPRINGVILLA DR. JAX, NC | 40. |
| 41. Vivian Blake 405 Ragland Dr Jax, NC. | 41. |
| 42. Marilyn Blake 405 Ragalwood Dr Jax NC | 42. |
| 43. Catherine Malena 202 Carver St. Jax NC 28540 | 43. |
| 44. RANDY BARKER 419 SINGLETREE CT JAX NC 28540 | 44. |
| 45. KAPOLANI COTTERELL 113 MEADOWVIEW CT. JAX, NC 28546 | 45. |
| 46. Linda Brooks 155 Wahpatulla Dr 28 Hubert NC | 46. |
| 47. Donna Marie Lucas Triangle Rd # 338 | 47. |
| 48. Judd Foster P.O. Box 244 Wallace N.C. 28466 | 48. |
| 49. Francis R Pusco 940 Railroad St Willard, N.C. 28478 | 49. |
| 50. Joe Dyer 402 Aragona Blvd. Jacksonville, NC. 28540 | 50. |
| 51. Bill Thigpen 841 Ernest King Rd Gville NC | 51. |
| 52. Cheryl Hughey 841 Ernest King Rd Gville NC | 52. |
| 53. Pearlie S. Jones 2106 Hwy 172 S.F. NC. | 53. |
| 54. Marcy Jones 205 Blake Rd. Jax N.C. 28540 | 54. |
| 55. Mark Beverly 2101 Carmen Ave | 55. |
| 56. Sherry Boucher 210 York St. | 56. |
| 57. Dwight Beverly 2101 Carmen Ave | 57. |
| 58. Lois Hall 469 Eighthouse Wallace N.C. 28466 | 58. |
| 59. Dianna Robinson 540 Wooten Rd. Maple Hill | 59. |
| 60. Annie Thompson Maple Hill NC | 60. |

April 17, 1997

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Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Mary Alice K. McCarron 1791 Dunn Town Rd. | 1. B Morris-Jackson 1200 Merrimac Ave |
| 2. Isabel Simmons 413 Kirkhaven N.C. | 2. Martha Muhammad Rt 1, Jamesville N.C. |
| 3. Sandra Savage 1714-B Colgate Dr Kinston | 3. Mark Fye |
| 4. Grace Tindal 705 W Lenoir ave | 4. Carrie King 909 N. Tiffany |
| 5. Amy Sutton 1503 Chanticleer ave Kinston | 5. Karen Johnson 1170 B, Colgate |
| 6. Mattie Blount 8 E Mitchell Woods Cts. Kinston | 6. Betty Upchurch 214 Bethany St. |
| 7. Alesia M. Gilchrist 420 Parkwood Rd Kinston | 7. Robert Wooten 206 Pine St. |
| 8. Jackie Clyburn 408 Allenite Ave | 8. Tonika Freeman |
| 9. Connie Lynchurch 406 Allenite Ave | 9. Brenda M. Freeman |
| 10. Clara Laurence | 10. Juanita Mack |
| 11. [illegible] | 11. John Pitt 613 Sampson Ave |
| 12. Sherinetta Smith | 12. Deborah Barrett |
| 13. Mamie Gray 508 Chestnut | 13. Marjorie Barnett |
| 14. Susan Smith 201 Dixon St | 14. Matthew Whitfield |
| 15. Patricia Best 6635 Freddy Street | 15. Tonya Mory |
| 16. David Best 6635 Freddy Street | 16. Barbara Haddock |
| 17. Lucy C. Brockett | 17. Tom Haddock |
| 18. Jamy Blount P.O. Box 2545 Kinston NC | 18. Calvin Haddock |
| 19. Lyle Kinston | 19. Irene Edwards |
| 20. Mary Foster | 20. Vanessa Hall |
| 21. Ethel M Lewis | 21. Josh Lewis |
| 22. Deborah Gaye Battle | 22. Will Bibbs Drowning Hill |
| 23. Faye Bratley | 23. Juanita Munford Drowning Hill |
| 24. Rosiana Barnes | 24. |
| 25. Gill Barnes | 25. |
| 26. Barbara Jones | 26. |
| 27. Marvin Munford Drowning Hill | 27. |
| 28. Evelyn Daniels 114-D Simon Brisha | 28. |
| 29. Wesley Daniels Rt 1 Kinston NC | 29. |
| 30. Michelle Daniels | 30. |
| 31. [illegible] Lee 4-C Simon Brisha | 31. |
| 32. Alberta Kimbro | 32. |
| 33 Shelita Williams | 33. |
| 34. Christina Williams | 34. |
| 35. Bridgette Coleman | 35. |
| 36. Holden Coleman 17 A Sarah Rountree | 36. |
| 37. Elaine Moody Box 113 Cobin Street | 37. |
| 38. Jacqueline Moore 2329 Brierfield Rd. | 38. |
| 39. Jackie Cox - Kinston, Rt 1 | 39. |
| 40. Jennifer Williams 116-F Mitchell Woods Ct Kinston | 40. |
| 41. Daniel Williams 306 Forest Dr | 41. |
| 42. Mattie Hill 1004 W. Washington Ave | 42. |
| 43. Willie Hill Box 5862 - Kinston, NC | 43. |
| 44. Linda Walker 1820 Faye Dr Kinston | 44. |
| 45. Quinnetta Washington 302-D Richard Greene Rd Kinston, N.C | 45. |
| 46. Jon Wood | 46. |
| 47. Michelle Taylor | 47. |
| 48. Sheena Sheffield 43 Pecan Grove Ingram | 48. |
| 49. Patricia Plymouth 5407 Edwards Chapel Rd. | 49. |
| 50. Tina Moore 406 Vines Ave | 50. |
| 51. Pamela Brooking 113 Candlewood Drive | 51. |
| 52. Theresa Sinclair P.O. Box Snow Hill NC | 52. |
| 53. Bonnie Sanders Kinston, N.C. | 53. |
| 54. Jodi A. Green Kinston NC. | 54. |
| 55. Dashe Hayes | 55. |
| 56. Leann [illegible] | 56. |
| 57. Robert Lee Mobley | 57. |
| 58. Mary Jones | 58. |
| 59. [illegible] | 59. |
| 60. Dawn Miles | 60. |

April 17, 1997

To the N.C. Senate Committee :

I express my option against Senator David Weinstein's bill proposed April 16, 1997. Senate Bill 893 to make beach bingos illegal in the state of North Carolina, to be heard by the Senate Judicatory Committee no later than May 1, 1997.

I ask as a citizen and a tax payer of North Carolina, ( and a voter), to please NOT pass this new Bill.

Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Michael L. Clark 114A Sunny Ln Goldsboro | 1. |
| 2. Steve Fort | 2. |
| 3. Robert Fort | 3. |
| 4. Jessica Fort | 4. |
| 5. Todd D. Daughtry 8150 old NH. Olivo Hwy Dudley | 5. |
| 6. [illegible] 6. Raleigh R. 128 | 6. |
| 7. Julia [illegible] 820 Kenilworth | 7. |
| 8. Pauline Eells Goldsboro N.C | 8. |
| 9. [illegible] Ann [illegible] 103 W. Lockhaven Dr. Gol/bo. | 9. |
| 10. Dorothy Murillo 126 Sleepy Creek Dr. Dudley NC | 10. |
| 11. Bobbie Whitley 185 Colfax Ave Goldsboro NC | 11. |
| 12. Paula, Col 300 Veronica Ave Goldsboro NC | 12. |
| 13. [illegible] 309 Vance Ave. Goldsboro NC | 13. |
| 14. Jamatta Marsden 1903 Ury K Mon Goldsboro | 14. |
| 15. Jesse Griffis 642 Powell Rd. Goldsboro NC. 27534 | 15. |
| 16. Robert L. Cox 200 Stony Hollow Rd. NC 27530 | 16. |
| 17. Willie L. Coley 3307 St. Williams ST Goldsboro | 17. |
| 18. Vera Wilson 324 Williams ST Goldsboro | 18. |
| 19. Irene Sherrity 414 Murray Don't SHOP IN THE | 19. |
| 20. Wanda Weeks Goldsboro HANDICAPPED | 20. |
| 21. Kathryn Strickland 1601 Murphy St Goldsboro | 21. |
| 22. Peggy Grady 3821 Lindsay Ln Goldsboro NC | 22. |
| 23. Edna Mossy 520 Claiborne Goldsboro NC | 23. |
| 24. Elena Myrick | 24. |
| 25. Sandra D. Myrick | 25. |
| 26. Peggy Stigall Kenston NC | 26. |
| 27. Carolyn Heath Kenston | 27. |
| 28. Richard Johnson Seven Springs | 28. |
| 29. Annette King Dudley N.C. | 29. |
| 30. Willie Fields Goldsboro N.C | 30. |
| 31. Loretta Godwin NC | 31. |
| 32. Catherine F. Godwin NC | 32. |
| 33. Francena M. Herrington Goldsboro, NC. | 33. |
| 34. Darrell Foye Goldsboro N.C. | 34. |
| 35. Jamie Foye Goldsboro N.C. | 35. |
| 36. Roger Cox Goldsboro N.C. | 36. |
| 37. Dathnia Wade Goldsboro N.C. | 37. |
| 38. Antone Holmes Goldsboro, N.C. | 38. |
| 39. Carla Brodie Goldsboro, N.C. | 39. |
| 40. MICHAEL CHAMPION GOLDSBORO NC | 40. |
| 41. Mary Swindall Dudley NC | 41. |
| 42. Lula Faucette Dudley NC | 42. |
| 43. Jan M Champion Dudley N.C | 43. |
| 44. Pinkie Daniels 416 Beech St. | 44. |
| 45. Pearl Byrd 2950 Glendale Rd | 45. |
| 46. Margaret Holmes-939 Stevens Rd | 46. |
| 47. Goldsboro NC 27534 | 47. |
| 48. Thomas Faison Goldsboro NC 27534 | 48. |
| 49. Angela Faison, Goldsboro, N.C. 27534 | 49. |
| 50. Wesley Barefoot | 50. |
| 51. Gilbert Kelly | 51. |
| 52. John Bell Jr | 52. |
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Sincerely,

| Signature & Address | Signature & Address |
|---|---|
| 1. Lois Peeling P.O Box 277 Micro NC 27555 | 1. |
| 2. Jeannette Dupree 510 S. Peedee St. Princeton NC | 2. |
| 3. Belinda Atkins 1097 Davis Mill Rd 27576 | 3. |
| 4. [illegible] 6092 US 70 Smithfield NC 2757 | 4. |
| 5. Margaret Bryant Four Oaks NC 27524 | 5. |
| 6. Tasha Robins 3646 Clayton, N.C. 27520 | 6. |
| 7. Phyllis Faulk Gane 4373 Stevens Chapel Rd. | 7. |
| 8. Shirley A. Radford 1411 Buffalo Rd Four Oaks N.C. | 8. |
| 9. Cindy Poole 3158 Forest Hill Church Rd Selma, N.C. | 9. |
| 10. Brenda Russell PO Box 53 Selma, NC | 10. |
| 11. Brenda Rodriguez PO Box 374 Four Oaks NC Mills NC | 11. |
| 12. [illegible] PO BX 1535 | 12. |
| 13. [illegible] 814A Smithfield NC | 13. |
| 14. Elizabeth Richardson 814A Smithfield NC | 14. |
| 15. Marion S. Walker P.O. Box 22 Selma, NC | 15. |
| 16. William Waller | 16. |
| 17. Pam White 301 N. 5th St Smithfield | 17. |
| 18. Ronald West 305 N. Layod St | 18. |
| 19. Lois Talley 310 E. Canderson St Selma | 19. |
| 20. Mattie Richardson 1102 West Oak St. Selma | 20. |
| 21. JoANN Whitney P.O. Box 44 Dover NC 28526 | 21. |
| 22. Martha Parrish 430 Evans Rd Princeton NC | 22. |
| 23. Jackie Mann PO Box 271 Pine Level NC | 23. |
| 24. Brenda Johnson Smithfield NC | 24. |
| 25. Margaretta Lamm Wilson NC | 25. |
| 26. Jessica Merritt - Smithfield NC | 26. |
| 27. Mary G. Gardner Kenly, NC | 27. |
| 28. Barbara H. Williams Selma, NC | 28. |
| 29. Betty J. Campbell Selma, N.C. | 29. |
| 30. Kathleen Daniel Selma, N.C | 30. |
| 31. [illegible] | 31. |
| 32. Hope Bryant Smithfield NC 27577 | 32. |
| 33. Beverly Mayfield Smithfield | 33. |
| 34. Fred [illegible] | 34. |
| 35. George Powell | 35. |
| 36. Sheryl D. Watkins | 36. |
| 37. Cathy Godwin | 37. |
| 38. Michael Thompson | 38. |
| 39. Elaine Odom | 39. |
| 40. Pat Mabry | 40. |
| 41. Kay C. White | 41. |
| 42. [illegible] Chairman Selma, N.C. | 42. |
| 43. Kimberly Jones Princeton, NC | 43. |
| 44. Brenda Herring Princeton | 44. |
| 45. Lori Deans Princeton | 45. |
| 46. Elaine Littleton Selma, N.C. | 46. |
| 47. Pamela Woods Selma, N.C. | 47. |
| 48. Ellen Reeder Selma N.C. | 48. |
| 49. Roxanne Miller Smithfield N.C. | 49. |
| 50. Jennifer Tolley 46 Deerbrook Rd Kenly NC 27542 | 50. |
| 51. Jimmie moore 509 Micro | 51. |
| 52. Jean moore 509 micro | 52. |
| 53. Robert moore PO Box 509 Micro | 53. |
| 54. Linda Talley 139 Deerbrook Kenly | 54. |
| 55. Marguerite Hogue Middlesex | 55. |
| 56. Nancy Hogue Middlesex | 56. |
| 57. B. Pi Wynn Smithfield, N.C | 57. |
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Against Angel

✓ Melvin Sutherland
✓ ~~Berta~~ Mildred Bullock
✓ Frances Matthews
✓ Rina Mae Chase
✓ Karen Wall
✓ Darla Hargett
✓ Chris Wilder
✓ Carolyn Jenkins
✓ Hazell Walker (9)
✓ Sharon Henderson (10)
✓ Delma Dupree
✓ Scott Charles
✓ Otis Carter → (13)

Against Page 3

Carolina Proctor
Kenneth Proctor) owners
Evelyn Campbell
Pamela Gooden
Ben Sivley
~~[redacted]~~
Cecil A. Graves
Kimberly Stewart

Against
p. 3

Christine Flippin
Carolyn Jenkins
Hazel Walker
Sharon Henderson
Patricia Alejandro
Dianna Lloyd
Delma Dugree
Randall Stroud