1999

HOUSE JUDICIARY II COMMITTEE

MINUTES

HOUSE COMMITTEE ON JUDICIARY II
1999 SESSION

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
BRASWELL, Jerry, Chair	Blinda Edwards	715-3000	420	96
MICHAUX, Mickey V. Chair	Anne Peele	733-5772	1325	57
BAREFOOT, Daniel	Jackie Pittman	715-3021	416B	72
CANSLER, Lanier	Barbara Cansler	733-5605	1209	110
CAPPS, J. Russell	Pamela Ahlin	715-2526	1424	85
CRAWFORD, James	Linda Winstead	733-5824	1301	24
DEDMON, Andrew, MAJORITY WHIP	Donna Abu Harb	733-5732	2213	12
HENSLEY, Bob	Margie Penven	733-5780	610	79
JARRELL, Mary L.	Edna Lee Collar	733-5749	2219	3
KISER, Joe L..	Marilyn Holder	733-5782	1317	100
RUSSELL, Carolyn	Susan Brothers	715-0873	1213	62
SHERRILL, Wilma M.	Rosa Kelley	715-4466	602	37

EX-OFFICIO MEMBERS:

HACKNEY,Joe, Speaker Pro Tem
BADDOUR, Phillip A., Majority Leader
EARLE, Beverly, Majority Whip
CUNNINGHAM, Pete

RESEARCH DIVISION STAFF:

ROSE, Steve	733-2578
JOHNSON, Robin	733-2578

JUDICIARY II

COMMITTEE MEMBERSHIP



Rep. Braswell
Chair



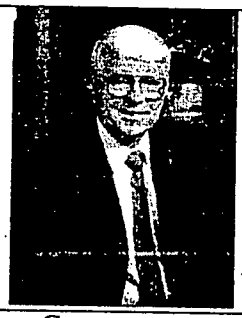
Rep. Michaux
Vice Chair



Rep. Barefoot



Rep. Cansler



Rep. Capps



Rep. Crawford



Rep. Dedmon



Rep. Hensley



Rep. Jarrell



Rep. Kiser



Rep. Russell



Rep. Sherrill

ATTENDANCE

1999 SESSION

(JUDICIARY II)

DATES	M/D	3/2	3/4	3/11	3/18	3/23	3/25	3/30	4/6	4/8	4/13	4/15	4/20	4/21	
BRASWELL, JERRY (CHAIR)		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
MICHAUX, H. M., JR. (V. CHAIR)		✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	
BAREFOOT, Daniel W.		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
CANSLER, Lanier M.			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
CAPPS, J. Russell			✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	
CRAWFORD, James W. Jr.			✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	
DEDMON, Andrew T. (Majority Whip)			✓												
HENSLEY, Bob.			✓		✓	✓		✓	✓		✓	✓	✓	✓	
JARRELL, Mary L.		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
KISER, Joe L.		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	
RUSSELL, Carolyn B.		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
SHERRILL, Wilma M.		✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
RESEARCH DIVISION STAFF															
ROSE, Steve		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	
JOHNSON, Robin		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	
EX-OFFICIO MEMBERS															
HACKNEY, Joe, Speaker Pro Tem															
BADDOUR, Phillip A., Majority Leader															
EARLE, Beverly M., Majority Whip															
CUNNINGHAM, W. Pete						✓	✓		✓	✓					

ATTENDANCE LOG
1999 SESSION

HOUSE COMMITTEE ON
JUDICIARY II

DATES	4/22	4/23	4/27	5/11	5/13		5/18	5/20	5/25	6/1	6/8	6/10	6/15	6/17	6/22
BRASWELL, JERRY (CHAIR)	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
MICHAUX, H. M., JR. (V. CHAIR)	✓	✓	✓	✓			✓		✓			✓	✓	✓	✓
BAREFOOT, DANIEL W.	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
CANSLER, LANIER M.	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓			✓
CAPPS, J. RUSSELL		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
CRAWFORD, JAMES W., JR.	✓	✓		✓	✓			✓	✓			✓	✓		
HENSLEY, BOB	✓	✓	✓	✓			✓	✓	✓	✓		✓	✓	✓	✓
JARRELL, MARY L.	✓	✓		✓	✓			✓	✓	✓	✓	✓		✓	✓
KISER, JOE L.		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓
RUSSELL, CAROLYN B.	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓
SHERRILL, WILMA M.	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓
RESEARCH DIVISION STAFF															
ROSE, STEVE	✓	✓	✓	✓	✓		✓	✓	✓						✓
JOHNSON, ROBIN	✓	✓	✓	✓	✓		✓	✓	✓						✓
EX-OFFICIO MEMBERS															
HACKNEY, JOE, SPEAKER PRO TEM															
BADDOUR, PHILIP A., MAJORITY LEADER															
EARLE, BEVERLY M., MAJORITY WHIP															
DEDMON, ANDREW T., MAJORITY WHIP									✓				✓		✓
CUNNINGHAM, W. PETE															

ATTENDANCE

1999 SESSION

(JUDICIARY II)

DATES	CMD 4/29	7/6													
BRASWELL, JERRY (CHAIR)	✓	✓													
MICHAUX, H. M., JR. (V. CHAIR)															
BAREFOOT, Daniel W.	✓	✓													
CANSLER, Lanier M.	✓	✓													
CAPPS, J. Russell	✓	✓													
CRAWFORD, James W. Jr.	✓	✓													
DEDMON, Andrew T. (Majority Whip)															
HENSLEY, Bob.	✓	✓													
JARRELL, Mary L.	✓	✓													
KISER, Joe L.	✓	✓													
RUSSELL, Carolyn B.	✓	✓													
SHERRILL, Wilma M.	✓														
RESEARCH DIVISION STAFF															
ROSE, Steve		✓													
JOHNSON, Robin		✓													
EX-OFFICIO MEMBERS															
HACKNEY, Joe, Speaker Pro Tem															
BADDOUR, Phillip A., Majority Leader															
EARLE, Beverly M., Majority Whip															
CUNNINGHAM, W. Pete															

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY II Valid Through 17-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 27=	CLARY	EMER. SHELTER/HEALTH FACIL. IMMUNITY	H -RE-REF COM ON JUDICII	02-16-99	
H 94	MICHAUX	SUPERIOR COURT DIVISION ELECTIONS	H -RE-REF COM ON JUDICII	03-03-99	
H 112	BAREFOOT	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	02-22-99	03-09-99
H 190=	CANSLER	STATE HOSPITALS/PEER REVIEW	*R -CH. SL 99-0222	03-01-99	03-24-99
H 286=	**EARLE**	**ADOPTION RECORDS AND REGISTRY**	***HF-REPTD UNFAV**	**03-04-99**	**04-19-99**
H 328=	BRASWELL	SENT. COMMN/CRIM LAW CHANGES	*R -CH. SL 99-0408	03-04-99	03-31-99
H 478=	JARRELL	THREATEN COURT OFFICERS	*R -CH. SL 99-0398	03-17-99	04-07-99
H 493	FITCH	ABOLISH ALIEN. AFFECT./CRIM. CONV.	HF-FAILED 2ND READING	03-18-99	04-07-99
H 644=	GULLEY J	QUICK TAKE NOTICE OF APPEAL	*R -CH. SL 99-0410	03-29-99	04-23-99
H 760	SHERRILL	AMEND ARSON LAWS	*H -RE-ASSIGNED TO APP-JPS	03-31-99	04-20-99
H 813	HENSLEY	PROHIBIT CYBERSTALKING	*S -REF TO COM ON JUDICI	04-01-99	04-19-99
H 814	HENSLEY	FINANCIAL IDENTITY FRAUD	H -REF TO COM ON JUDICII	04-01-99	
H 815	**HENSLEY**	**LEFT TURN ON RED**	**S -REF TO COM ON RULES &**	**04-01-99**	**04-23-99**
H 817	HENSLEY	LAW ENF. OFF. DISCIPLINE	HF-REPTD UNFAV	04-01-99	05-10-99
H 818	HENSLEY	RULE 609 IMPEACHMENT EVIDENCE	R -CH. SL 99-0079	04-01-99	04-19-99
H 946	DECKER	ALIENATION OF AFFECTION	H -REF TO COM ON JUDICII	04-08-99	
H 975	BRASWELL	SAVAN EXEMPTION	*R -CH. SL 99-0169	04-12-99	04-23-99
H1020=	DEDMON	SAFETY PROFESSIONALS	H -REF TO COM ON JUDICII	04-14-99	
H1021	HILL	REVISE UCC FILINGS PROCEDURES	*S -RE-REF COM ON JUDICII	04-14-99	04-23-99
H1088	BAREFOOT	IMPROVE TORRENS LAW	R -CH. SL 99-0059	04-15-99	04-23-99
H1096	HILL	REGISTER OF DEEDS AMENDS	*H -RE-REF COM ON WAYS&MNS	04-15-99	04-23-99
H1144	MICHAUX	NEED CONSENT TO TAPE COMMUNICATION	H -REF TO COM ON JUDICII	04-15-99	
H1202=	CANSLER	CHILD HEALTH INS./SUPPORT ORDERS	S -REF TO COM ON JUDICI	04-15-99	04-23-99
H1227=	HORN	BULLET PROOF VEST/COMMIT FELONY	H -REF TO COM ON JUDICII	04-15-99	
H1228	ADAMS	RESTORATION OF RIGHTS	H -REF TO COM ON JUDICII	04-15-99	
H1279	WARNER	FINANCIAL IDENTITY FRAUD	R -CH. SL 99-0449	04-15-99	04-27-99
H1279	WARNER	FINANCIAL IDENTITY FRAUD	R -CH. SL 99-0449	07-06-99	07-13-99
S 62	HORTON	VALIDATING CERTAIN NOTARIAL ACTS	*R -CH. SL 99-0021	02-24-99	03-17-99
S 194	RAND	NURSE LICENSURE COMPACT	*R -CH. SL 99-0245	05-25-99	06-10-99
S 310	MILLER B	AMEND TIME FOR NOTICE OF APPEAL	*R -CH. SL 99-0309	03-22-99	03-31-99

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY II Valid Through 17-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 310	MILLER B	AMEND TIME FOR NOTICE OF APPEAL	*R -CH. SL 99-0309	04-08-99	06-28-99
S 311	MILLER B	MODIFY SUMMONS UNDER RULE 4	H -RE-REF COM ON JUDICII	03-18-99	03-31-99
S 311	MILLER B	MODIFY SUMMONS UNDER RULE 4	H -RE-REF COM ON JUDICII	04-08-99	
S 414	KINNAIRD	CLOSE LOOPHOLE MIN. HOUS. STAND	*H -CONF COM APPOINTED	04-05-99	06-28-99
S 483	CLODFELTER	AMEND FOREIGN CORP. LAW	R -CH. SL 99-0151	04-22-99	05-18-99
S 525	HAGAN	PERSONAL REP. QUALIFICATIONS	*R -CH. SL 99-0133	04-07-99	05-12-99
S 527	HARTSELL	EMERGENCY TRAFFIC ORDINANCES	*R -CH. SL 99-0310	04-28-99	06-28-99
S 654	GULLEY W	MANUFACTURED HOME LAW RESTORATION	*R -CH. SL 99-0278	04-22-99	06-10-99
S 761	WELLONS	UPDATE CORPORATE CONVEYANCING	*R -CH. SL 99-0221	04-27-99	06-07-99
S 773	CLODFELTER	CLARIFY ANNEXATION REMAND	R -CH. SL 99-0148	04-28-99	05-24-99
S 789	SOLES	CHARITABLE NONPROFIT NOTICE	*R -CH. SL 99-0204	04-28-99	05-26-99
S 830	MILLER B	AUTO REPAIR WORK DISCLOSURES	*R -CH. SL 99-0437	05-03-99	07-13-99
S 852	JORDAN	DRUG TREATMENT COURT AMENDMENTS	*R -CH. SL 99-0298	04-28-99	06-28-99
S 908	ALBERTSON	REVISE UCC WAREHOUSE RECEIPTS	*H -RE-REF COM ON JUDICII	04-29-99	07-01-99
S 908	ALBERTSON	REVISE UCC WAREHOUSE RECEIPTS	*H -RE-REF COM ON JUDICII	07-15-99	
S 921	MILLER B	AMEND RULE 55	R -CH. SL 99-0187	04-23-99	05-26-99
S1012	COOPER	MEDICAL MALPRACTICE PLEADINGS	*HF-FAILED 2ND READING	04-29-99	06-22-99
S1018	DALTON	MARRIAGE LICENSES	*R -CH. SL 99-0375	04-23-99	06-28-99

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

AGENDA

HOUSE COMMITTEE ON JUDICIARY II

MARCH 2, 1999
ROOM 421 LOB
12:00 PM

OPENING REMARKS

Representative Braswell, Chairman

HOUSE BILL #27

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

JUDICIARY II
COMMITTEE MINUTES
MARCH 2, 1999
12:00 p.m.

The meeting was called to order by the Chairman, Rep. Braswell.

House Bill #27, sponsored by Rep. Clary, was on the agenda. Staff person, Steve Rose, gave an explanation of the bill. After some discussion by Committee members the bill was postponed until the following Tuesday. Rep. Clary was not available for this meeting.

The meeting was adjourned.

Members present: Rep. Braswell, Rep. Michaux, Rep. Barefoot, Rep. Jarrell, Rep. Kiser, Rep. Russell and Rep. Sherrill.

Respectfully submitted,

Blinda Edwards

Blinda Edwards, Committee Clerk

Jerry Braswell

Rep. Jerry Braswell, Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 27*

Short Title: Emer. Shelter/Health Facil. Immunity. (Public)

Sponsors: Representatives Clary; Alexander, Allen, Bowie, Cansler, Cole, Culp, Cunningham, Earle, Easterling, Gardner, Gillespie, Hurley, Justus, Kiser, McComas, Morris, Mosely, Owens, Preston, Rayfield, Russell, Smith, Teague, Walend, Warner, C. Wilson, and G. Wilson.

Referred to: Rules, Calendar and Operations of the House.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-112. Limitation on liability for health care facilities that provide temporary shelter or temporary services during a disaster or emergency; waiver of rules.**

(a) Any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not liable for any personal injury, wrongful death, property damage, or other loss caused by the facility's or home care agency's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The facility or home care agency is licensed to provide during its ordinary course of business.
(2) Provided in accordance with an agreement between the health care facility or home care agency and the emergency management agency.
(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the health care facility or home care agency.

(d) Commission rules pertaining to facilities or home care agencies shall be waived to the extent necessary to allow the facility or home care agency to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in a facility.

(e) As used in this section:
(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.
(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 2. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-7. Limitation on liability for certain adult care homes providing shelter or services during disaster or emergency; waiver of rules.**

(a) An adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not

liable for any personal injury, wrongful death, property damage, or other loss caused by the adult care home's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The adult care home is licensed to provide during its ordinary course of business.

(2) Provided in accordance with an agreement between the adult care home and the emergency management agency.

(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the adult care home.

(d) Commission rules including pertaining to adult care homes shall be waived to the extent necessary to allow the adult care home to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in an adult care home.

(e) As used in this section:

(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 3. This act becomes effective July 1, 1999, and applies to shelter or services provided on and after that date.

North Carolina General Assembly
Legislative Services Office

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

[redacted]. Robinson, Director
[redacted]trative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
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Thomas L. Covington, Director
Fiscal Research Division
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Information Systems Division
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Terrence D. Sullivan, Director
Research Division
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(919) 733-2578

March 1, 1999

MEMORANDUM

TO: **HOUSE JUDICIARY II COMMITTEE**

FROM: **STEVEN ROSE, COMMITTEE COUNSEL**

RE: **HOUSE BILL 27; Emergency shelter during disasters-immunity from liability**

House Bill 27 is recommended by the North Carolina Study Commission on Aging. It provides immunity from liability for health care facilities, home care agencies, and adult care homes, when care is rendered or shelter given to handicapped persons during a declaration of disaster or emergency, whether or not the facility is compensated.

Section 1 of the bill amends Part A of Article 6 of Chapter 131E by adding G.S. 131E-112. It provides that a health care facility (defined in G.S. 131E-154.2(3)), or a home care agency (defined in G.S. 131E-136(2)) that provides temporary shelter or temporary services to handicapped individuals during a declared disaster or emergency will not be liable for personal injury, wrongful death, property damage, or other loss caused by the facility's or agency's acts or omissions in the provision of such shelter or services. Immunity applies whether or not the facility is compensated. In order to quality for this immunity, the services must be rendered at the request of an emergency management agency implementing an approved emergency plan; the facility or home care agency must be licensed to provide such care in the ordinary course of business; care must be provided in accordance with an agreement between the providing facility or agency and the emergency management agency; the care must be provided for not more than 45 days after declaration of the emergency or disaster, with the possibility of a 45 day continuation of immunity if the executive order declaring the disaster or emergency is extended.

This immunity does not apply if the damage or injury is caused by gross negligence, wanton conduct, or intentional wrongdoing. Provision is made for the waiver of rules of the North Carolina Medical Care Commission in order to permit the rendering of the emergency services.

"Emergency Management Agency" and "handicapped individual" are defined in subsection (e) of proposed G.S. 131E-112.

Section 2 of the bill amends Article 1 of Chapter 131D by adding G.S. 131D-7 to provide a similar waiver to adult care homes as defined in G.S. 131D-2(1b).

The act is effective July 1, 1999, and applies to shelter or services provided on or after that date.

H27-SMRL-001

§ 131E-154.2. Definitions.

As used in this Part, unless the context clearly implies otherwise:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Department" means the Department of Health and Human Services.

(3) "Health Care Facility" means a hospital, psychiatric facility; rehabilitation facility; long-term care facility; home health agency; intermediate care facility for the mentally retarded; chemical dependency treatment facility; and ambulatory surgical facility.

(4) "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel, including nurses, nursing assistants, nurses aides, and orderlies. "Nursing pool" does not include an individual who engages solely in providing his own services on a temporary basis to health care facilities.

(5) "Trauma" means acute physical injury to the human body that is judged, by the use of standardized field triage criteria (anatomic, physiologic, or mechanism of injury), to create a significant risk of mortality or major morbidity. (1989, c. 744, s. 1; 1993, c. 336, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 131E-154.3. Licensing.

(a) No person shall operate or represent himself to the public as operating a nursing pool without obtaining a license from the Department.

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Part and with rules adopted pursuant to it.

(d) Nursing pools administered by health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article. (1989, c. 744, s. 1.)

§ 131E-154.4. Rules a

(a) The Commission shal
necessary for the implemen
include the following requir
(1) The nursing pool sh
provides care meets
continuing educatio
the employee will b
(2) The nursing pool s
regulations relating
of personnel;
(3) The nursing pool sh
bility insurance to
expense incident t
injury of any perso
tice in the provisio
pool or its employe
(4) The nursing pool s
personnel policies
These policies shal
personnel, training
evaluation, and org
(5) Any other aspects o
be regulated to pro
(b) The Commission shal
lation of charges by the nurs
pool. (1989, c. 744, s. 1.)

§ 131E-154.5. Inspec

The Department shall ins
rules adopted pursuant to
ance with the provisions
pursuant to it. Inspections
rules adopted by the Comm

§ 131E-154.6. Adver
procedu

(a) The Department ma
call, cancel, or amend a lic
failure to comply with the
adopted pursuant to it.
(b) The provisions of Ch
Administrative Procedure
tion and judicial review in
the action described in sub
1.)

§ 131E-154.7. Injun

(a) Notwithstanding the
the Department may main
injunctive relief or other
prevent the establishment

The duration of the temporary absence shall be calculated from the day of the patient's admission to a hospital until the date the nursing home receives written notice of the specific date of discharge.

This subsection shall not apply in instances in which the patient's treatment can no longer be provided by the nursing home upon re-admission.

(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars ($50.00) a day, up to a maximum of one thousand five hundred dollars ($1,500), against the nursing home, for each violation.

(c) The provisions of Chapter 150B of the General Statutes that govern contested cases apply to appeals from Department action pursuant to this section. (1987 (Reg. Sess., 1988), c. 1080, s. 1.)

§ 131E-131. Rule-making authority; enforcement.

The Commission shall adopt rules necessary for the implementation of this Part.

The Department shall enforce the rules adopted by the Commission to implement this Part. (1993, c. 499, s. 2.)

§§ 131E-132 through 131E-134: Reserved for future codification purposes.

Part C. Home Care Agency Licensure Act.

§ 131E-135. Title; purpose.

(a) This Part shall be known as "Home Care Agency Licensure Act."

(b) The purpose of this Part is to establish licensing requirements for home care agencies. (1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34.)

Editor's Note. — Session Laws 1991, c. 59, which amended this section, in s. 2 provides: "The Commission shall adopt rules necessary to regulate home care services provided by a hospital. Such rules shall be comparable, but not necessarily identical to the Commission's rules for home care agencies and becomes [sic] effective July 1, 1992."

§ 131E-136. Definitions.

As used in this Part, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Home care agency" means a private or public organization which provides home care services.

(3) "Home care services" means any of the following services and directly related medical supplies and appliances, which

are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;
b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;
c. Medical social services;
d. In-home aide services that involve hands-on care to an individual;
e. Infusion nursing services; and
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E. (1971, c. 539, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1022, s. 4; 1987, c. 34, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.90.)

Editor's Note. — Session Laws 1
443, s. 1.1, provides: "This act shal
known as 'The Current Operations
Capital Improvements Appropriat
Act of 1997'."

Session Laws 1997-443, s. 35.4,
severability clause.

§ 131E-137. Services t

(a) Every county shall pro
nursing services, and at le
services: part-time, interm
therapy, speech therapy, me
services.

(b) Repealed by Session L
1992.

(c) These services shall
licensed under this Part. Th
contract with another home

(d) Repealed by Session L
1184; 1979, c. 754, s. 1; 1983
c. 761, s. 34.)

§ 131E-138. Licensur

(a) No person or governm
agency without a license obt
this Part shall be construe
individual health professio
professions or to create any

(b) Repealed by Session
1992.

(c) An application for a
Department, and each appl
contain all information requ
be granted to the applican
ment that the applicant h
Part and the rules promulg

(d) The Department sha
the rules of the Commissio

(e) Each license shall be
named in the license and
except with the written ap

(f) The license shall be
licensed premises.

(g) The Commission sha
agency shall be deemed t
issued a license without
agency is already certified
Accreditation of Health C
Nursing, National Home C
tion Commission for In-Ho
nized by the Commission a
for all of the home care se
of continuing care retiren
Carolina Department of I

Chapters 131 through 131F

(b) Facilities subject to the provisions of this section shall include:

(1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and

(2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C.S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1997-443, s. 11A.118(a).)

Cross References. — As to criminal provisions for patient abuse and neglect, see § 14-32.2.

Editor's Note. — This Article is Part 2 of Article 5 of Chapter 10s, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective Oct. 1, 1981.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subsection (a).

§ 131D-2. Licensing of adult care homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(1a) "Administrator" means a person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed domiciliary home.

(1b) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Facility Services.

VISITOR REGISTRATION SHEET
JUDICIARY II

Date 3-2-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Hammack	NCAIL
Jim Wilson	NCAITC7
Patricia Smith	Freedom Newspapers
Stacey Flannery	NC HCFA
Lynda McDaniel	DHHS/DFS
Hugh Tilson	NCHA
Wm Lang	AHHC
Richard Hatch	AARP
Lisa Reyes	The Insider
Jack McGee	Board of Trade
Chad Creamer	NCATL
Dick Taylor	NCATL
Dick Carlton	Sec. Ind. Assn.
Tom Kilpatrick	Triad Va-Allen

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 4, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL #112

SENATE BILL #62

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

JUDICIARY II
COMMITTEE MEETING MINUTES
12:00 P. M.
MARCH 4, 1999

The meeting was called to order by the Chairman, Rep. Braswell, and he recognized Christine Yusman, the Page assisting the committee.

The bills before the committee were House Bill 112, sponsored by Rep. Barefoot, and Senate Bill 62, sponsored by Senator Horton. Senate Bill 62 was postponed per request of Senator Horton.

Staff person, Robin Johnson, gave an explanation of House Bill 112.

The Chairman asked for a motion to place HB 112 before the committee for discussion and Rep. Dedmon made that motion.

Rep. Barefoot spoke on the bill and presented an amendment that had some technical changes as recommended by the General Statues Commission.

Bly Hall with the General Statues Commission explained the amended bill.

The members of the committee discussed the amended bill and a motion to adopt the amendment was made by Rep. Cansler.

There were further questions and comments regarding the amendment. Mr. Murray of the General Statues Commission spoke on the issue regarding the rights of creditors. He indicated that creditors were protected in this bill.

Rep. Michaux made a motion for a favorable report of the committee substitute and an unfavorable report for the original bill.

The committee passed the motion.

The meeting was adjourned.

Please refer to attendance log for members present.

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell
Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 112 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 112

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

H112-ALT-1 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 1, line 3,
by adding the following language before the period:

"AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION";

and on page 4, lines 25 through 27,
by rewriting the lines to read:

"(c) This Article does not repeal or modify any provision of law relating to estate or inheritance taxes.";

and on page 5, line 19,
by deleting the phrase "one of".

SIGNED David W. Bamford
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

BOK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 112

Short Title: Securities Transfer on Death. (Public)

Sponsors: Representatives Barefoot; Alexander, Bridgeman, Buchanan, Church, Cox, Culpepper, Edwards, Fox, Haire, Hensley, Hurley, Kinney, Kiser, Luebke, McComas, McCombs, McCrary, McLawhorn, Melton, Oldham, Rayfield, Rogers, Smith, Sutton, Tolson, Tucker, Warren, Warwick, and Yongue.

Referred to: Judiciary II.

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by rewriting the title of Chapter 41 to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the

statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"§ 41-43. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"§ 41-44. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"§ 41-45. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"§ 41-46. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"§ 41-47. Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the

registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) Nothing in this Article shall be construed to repeal or modify any provision of Article 1 of Chapter 105 of the General Statutes relating to the administration of the inheritance tax laws of this State or any other law relating to inheritance taxes.

Adds'

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary and contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr.'
(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr. SUB BENE Peter Q. Brown'.

"**§ 41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2.

"**§ 41-51. Application of Article.**

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

Section 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from one of the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.
(2) Gifts causa mortis made by the ~~deceedent;~~ decedent.
(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.
(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

Section 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 4. This act becomes effective October 1, 1999.

North Carolina General Assembly
Legislative Services Office

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[redacted]strative Division
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MEMORANDUM

TO: Representative Braswell, Chair, House Judiciary II Committee
FROM: Robin S. Johnson, Committee Co-Counsel
(Walker Reagan,Staff Attorney)
DATE: March 3, 1999
RE: **HOUSE BILL 112 -- SECURITIES TRANSFER ON DEATH -**
Representative Barefoot

House Bill 112 would amend Chapter 41 - **Estates**, to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill also would rename the title of Chapter 41 as – **Estates and Interests in Property**.

House Bill 112 is a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 44 other states.

Section 1 of this bill would allow the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner may revoke or modify this designation at any time up until death. Also this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and as such would not be part of the probate estate.

Some of the advantages provided by the bill appear to be: 1) provides an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; 2) avoids probate and probate fees; and 3) simplifies the process of changing names on securities after death. The bill makes it clear that this act does not affect claims creditors, who can still claim these securities if necessary to satisfy claims against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. The bill also makes it clear that this form of ownership does not affect estate or inheritance tax collection and that these securities would be counted as part of the taxable estate.

One change that would result from this bill would be a reduction in the collection of probate fees by the clerks of court. Probate fees are collected on all personal property which passes through the probate estate. Because these changes would transfer these securities outside the probate estate, probate fees would not be collected on the value of the securities transferred by this method.

Section 2 of this bill makes a conforming change to the statute governing the rights of creditors to collect estate debts from assets passing outside the estate. This statute is only triggered when other assets of the estate are insufficient to satisfy all claims.

Section 3 authorizes the Revisor of Statutes to include the Official Comments to the Uniform Act from the Uniform Commissioners with the published statutes.

The bill becomes effective when it becomes law and applies to persons dying on or after that date who had registered such a designation on their securities at anytime prior to their death. This will ratify the designations made by people prior to the effective date of this act, including people who may have made such designations under the laws of other states.

H112-SMRH-001

CITED STATUTES

[redacted]-102. Definitions.

In this Article [Investment Securities]:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

([redacted]) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a [redacted]ty entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of G.S. 25-[redacted](b)(2)or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset", except as otherwise provided in G.S. 25-8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form", as applied to a certificated security, means a form in which:

[redacted] (i) The security certificate specifies a person entitled to the security; and

[redacted] (ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the [redacted], or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security", except as otherwise provided in G.S. 25-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(18) "Uncertificated security" means a security that is not represented by a certificate.

§ 41-2.2. Joint ownership of corporate stock and investment securities.

(a) In addition to other forms of ownership, shares of corporate stock or investment securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in shares of corporate stock or investment securities as provided by this section shall exist when such shares or securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the shares or securities for the joint tenants and by book entry or otherwise indicates (i) that the shares or securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such shares or securities shall be treated in the same manner as such shares or securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other provisions of the law relating to inheritance taxes.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: March 2, 1999

RE: House Bill 112 (Securities Transfer on Death)

House Bill 112 enacts the Uniform TOD (Transfer on Death) Security Registration Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1989 and subsequently reviewed by the General Statutes Commission and its Trusts Drafting Committee. The Act permits the owner of an investment security (that is, stocks, bonds, mutual fund shares, security accounts, etc.) to designate another person to become owner of the security when the present owner dies, in a manner similar to insurance policies. The designation is completely revocable until the death of the owner, and it eliminates the need for probate of that particular security. Estate or inheritance tax liability is not affected. The Uniform Act is endorsed by the American Bar Association and the American Association of Retired Persons and has been enacted in at least 44 states.

The Act offers owners of securities two significant advantages over the use of a joint tenancy when the owner wants nothing more than a nonprobate means of transferring ownership on death. The person named as TOD beneficiary has no ownership interest or right of control during the lifetime of the owner. Therefore, there are no income tax or gift tax consequences and the owner does not risk having the joint tenant cash the security and make off with the proceeds.

Please note that securities issuers and transfer agents with principal offices in states that have already enacted the Act are accepting securities registered in TOD form even from residents of states that have not enacted the Act.

Please note also the following specific points:

(1) Only a sole owner or multiple owners with right of survivorship can use the TOD registration process. The only type of multiple ownership with right of survivorship that can be created in a normal investment security under North Carolina law is a joint

tenancy with right of survivorship, although other types can be created in other states. Tenants in common cannot use the TOD designation. This limitation is found in the Uniform Act itself and is designed to prevent conflicting or divided beneficiary designations.

(2) The designated beneficiary or beneficiaries "take" on the death of the sole owner or the last surviving joint tenant. Multiple beneficiaries "take" as tenants in common.

(3) An issuer or transfer agent is not required to accept TOD designations and may establish the terms and conditions under which it will receive TOD registrations.

(4) This bill differs from the Uniform Act in five respects. First, it includes in the definition of "heirs" a specific citation to North Carolina's intestate succession statutes. Second, it includes in § 41-48 two subsections, (b) and (c), not found in the Uniform Act that are designed to protect the interest of creditors and the Department of Revenue. These provisions are similar to other provisions dealing with nontestamentary transfers on death such as joint bank accounts. Third, it omits an illustration and supporting language from § 41-49 that would have defined a particular, commonly used legal term ("per stirpes") in a way different from the usual meaning in this State, thereby avoiding a trap for the unwary. Fourth, it includes in § 41-50 a subsection (c) stating that the Act does not repeal G.S. 41-2.2 to avoid any argument that that section was partially repealed by implication. Fifth, it includes in the definition of "security" in § 41-40(9) a specific reference to security entitlements as defined in the revised Article 8 of the Uniform Commercial Code, which was enacted by the General Assembly in 1997.

Section 2 of the bill makes a conforming change to G.S. 28A-15-10(a), dealing with rights of creditors, and Section 3 authorizes the printing of official and drafters' comments.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 62

Short Title: Validating Certain Notarial Acts. (Public)

Sponsors: Senators Horton; and Garwood.

Referred to: Judiciary II.

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 10A of the General Statutes is amended by adding a new section to read:

"**§ 10A-17. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998."

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

VISITOR REGISTRATION SHEET
JUDICIARY II

March 4, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Hammack	NCATL
Floyd M. Lewis	General Statutes Commission
Charles J. MURRAY	" " "
P Bay Hull	" " "
[illegible]	[illegible]
Pamela Beaty	AOC
[illegible]	SOS
Barry Smith	Freedom Newspapers
DICK Carlton	Securities Ind. Assoc.
Janice Kennedy	NCDHHS
[illegible]	ACLU
Lee Rubman	CCPC

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 11, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL #27

SENATE BILL #62

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

JUDICIARY II
COMMITTEE MEETING MINUTES
12:00 P. M.
MARCH 11, 1999

The meeting was called to order by the Chairman, Rep. Braswell, and he recognized Ashley Ellis, and Meredith Falk, the Pages assisting the committee.

The bills before the committee were House Bill 27, sponsored by Rep. Clary, and Senate Bill 62, sponsored by Senator Horton. Rep. Clary requested that House Bill 27 be considered at another time. The committee honored her request.

The Chairman asked for a motion to place the Proposed Committee Substitute for Senate Bill 62 before the committee for discussion, and Rep. Michaux made that motion.

Proposed House Committee Substitute for Senate Bill 62 was submitted to the committee for consideration. Senator Horton and Staff Counsel, Steve Rose, explained the Proposed Committee Substitute.

Rep. Barefoot made a motion to give the House Committee Substitute for Senate Bill 62 a favorable report. The committee approved the motion. The House Committee Substitute for Senate Bill 62 was given a favorable report and the original Senate Bill 62 was given an unfavorable report.

The meeting was adjourned.

Members present:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Crawford
Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill		

Respectfully Submitted,

Blinda Edwards

Blinda Edwards
Committee Assistant

Jerry Braswell

Rep. Braswell, Chair

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 62 A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET **DATE** 11 March 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jayhin Thigpen	DHHS/DFS
Ell Seagroves	" "
Wm Smith	DHHS/ Div. of Aging
"Ben" Brow	NHC/ Special Needs Task Force
Bernard Allen	SOS
Craig Souza	NCMCAP
Lon Wilm	NCALTC7
[illegible]	DHHS/ Div. of Aging
[illegible]	AARP
[illegible]	N.C.A.C.C.
Nick Taylor	NCAFL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S62-HPCSRL-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL 62

Short Title: Validating Certain Notarial Acts. (Public)

Sponsors:

Referred to: Judiciary II.

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 10A of the General Statutes is amended by adding a new section to read:

"**§ 10A-17. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998."

Section 2. G.S. 10A-16(d), as amended in S.L. 1998-228, reads as rewritten:

"(d) This section applies to notarial acts performed on or before ~~October 1, 1998.~~ February 28, 1999."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 62
Proposed House Committee Substitute S62-PCS1567-RL

Short Title: Validating Certain Notarial Acts. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

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Section 1. Chapter 10A of the General Statutes is amended by adding a new section to read:

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Section 2. G.S. 10A-16(d), as amended in S.L. 1998-228, reads as rewritten:

"(d) This section applies to notarial acts performed on or before ~~October 1, 1998.~~ February 28, 1999."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 62

Short Title: Validating Certain Notarial Acts. (Public)

Sponsors: Senators Horton; and Garwood.

Referred to: Judiciary II.

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

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"**§ 10A-17. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998."

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

North Carolina General Assembly
Legislative Services Office

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

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(919) 733-6834

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

March 4, 1999

MEMORANDUM

TO: **House Judiciary II Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 62; Validating Certain Notarial Acts**

Senate Bill 62 amends Chapter 10A of the General Statutes, the Notary Public Act, by adding G.S. 10A-17. It would validate acknowledgments taken or instruments notarized on or before August 1, 1998 by persons whose notarial commissions were revoked on or before January 30, 1997.

Chapter 10A of the General Statutes authorizes the Secretary of State to commission as a notary any *qualified* person who submits the required application. The person must be at least 18 years of age, reside or work in this State, and complete a prescribed course of study as provided by the community college system (or be a licensed member of the N.C. bar). The term of a notary's commission is five years, unless revoked prior to the end of the term. The Secretary of State may deny or revoke a commission on any of the following grounds:

--**The notary** is convicted of a crime involving moral turpitude
--**The notary** has had a notarial commission or professional license revoked, suspended or restricted by this or any other state
--**The notary** has engaged in official misconduct, whether or not disciplinary action resulted

The Secretary of State may also revoke a commission when the notary fails to administer an oath or affirmation when performing a notarial act that requires the administering of an oath or affirmation.

Upon revocation of a notary's commission, the notary is required to surrender the stamp or seal to the Secretary of State. A person who performs notarial acts without a commission is guilty of a Class 1 misdemeanor.

This bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 27*

Short Title: Emer. Shelter/Health Facil. Immunity. (Public)

Sponsors: Representatives Clary; Alexander, Allen, Bowie, Cansler, Cole, Culp, Cunningham, Earle, Easterling, Gardner, Gillespie, Hurley, Justus, Kiser, McComas, Morris, Mosely, Owens, Preston, Rayfield, Russell, Smith, Teague, Walend, Warner, C. Wilson, and G. Wilson.

Referred to: Rules, Calendar and Operations of the House.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-112. Limitation on liability for health care facilities that provide temporary shelter or temporary services during a disaster or emergency; waiver of rules.**

(a) Any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not liable for any personal injury, wrongful death, property damage, or other loss caused by the facility's or home care agency's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The facility or home care agency is licensed to provide during its ordinary course of business.

(2) Provided in accordance with an agreement between the health care facility or home care agency and the emergency management agency.

(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the health care facility or home care agency.

(d) Commission rules pertaining to facilities or home care agencies shall be waived to the extent necessary to allow the facility or home care agency to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in a facility.

(e) As used in this section:

(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 2. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-7. Limitation on liability for certain adult care homes providing shelter or services during disaster or emergency; waiver of rules.**

(a) An adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not

liable for any personal injury, wrongful death, property damage, or other loss caused by the adult care home's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The adult care home is licensed to provide during its ordinary course of business.

(2) Provided in accordance with an agreement between the adult care home and the emergency management agency.

(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the adult care home.

(d) Commission rules including pertaining to adult care homes shall be waived to the extent necessary to allow the adult care home to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in an adult care home.

(e) As used in this section:

(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 3. This act becomes effective July 1, 1999, and applies to shelter or services provided on and after that date.

North Carolina General Assembly
Legislative Services Office

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

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istrative Division
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16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

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

March 11, 1999

MEMORANDUM

TO: **House Judiciary II Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Proposed Committee Substitute for Senate Bill 62; Validating Certain Notarial Acts**

The proposed committee substitute for Senate Bill 62 amends Chapter 10A of the General Statutes, the Notary Public Act, by adding G.S. 10A-17, which validates acknowledgments taken or instruments notarized on or before August 1, 1998 by persons whose notarial commissions were revoked on or before January 30, 1997. It also amends G.S. 10A-16(d) by changing the application date from acts committed before October 1, 1998 to those committed on or before February 28, 1999.

Chapter 10A of the General Statutes authorizes the Secretary of State to commission as a notary any *qualified* person who submits the required application. The person must be at least 18 years of age, reside or work in this State, and complete a prescribed course of study as provided by the community college system (or be a licensed member of the N.C. bar). The term of a notary's commission is five years, unless revoked prior to the end of the term. The Secretary of State may deny or revoke a commission on any of the following grounds:

--**The notary** is convicted of a crime involving moral turpitude
--**The notary** has had a notarial commission or professional license revoked, suspended or restricted by this or any other state
--**The notary** has engaged in official misconduct, whether or not disciplinary action resulted

The Secretary of State may also revoke a commission when the notary fails to administer an oath or affirmation when performing a notarial act that requires the administering of an oath or affirmation.

Notarial acts of a notary whose commission is revoked are invalid. G.S. 10A-17 would validate those acts, provided revocation occurred on or before January 30, 1997 and the act took place on or before August 1, 1998.

G.S. 10A-16 "cures" various errors committed by notaries that may invalidate the notarial act. It currently applies to acts performed before October 1, 1998. The amendment would make it applicable to acts performed on or before February 28, 1999. This statute has existed for many years and its effective period is amended regularly.

This bill would be effective when it becomes law.

S62-SMRL-002

See S.L. 1998-228, s. 10. Effective November 6, 1998.

§ 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 stated, whether correctly or erroneously, 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, or contains typed, printed, drawn, or handwritten material added to the seal, 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 another state 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, 1998.

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 18, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 190

HOUSE BILL 286

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

JUDICIARY II
COMMITTEE MEETING MINUTES
12:00 P. M.
MARCH 18, 1999

The meeting was called to order by the Chairman, Rep. Braswell, and he recognized Shannon Jenkins and Valarie Gardiner, the Pages assisting the committee.

The bills before the committee were House Bill 190, sponsored by Rep. Cansler, and House Bill 286, sponsored by Rep. Earle. Rep. Earle had requested that House Bill 286 be removed from the agenda and considered on the next Thursday. The committee honored her request.

The Chairman asked for a motion to place the Proposed Committee Substitute for House Bill 190 before the committee, and Rep. Barefoot made that motion.

Proposed Committee Substitute for House Bill 190 was submitted to the committee for consideration. Rep. Cansler and Staff Counsel, Robin Johnson, explained the Proposed Committee Substitute.

Rep. Russell made a motion to give the Proposed Committee Substitute for House Bill 190 a favorable report. The committee approved the motion with one opposing vote by Rep. Hensley. The Committee Substitute for House Bill 190 was given a favorable report and the original House Bill 190 was given an unfavorable report.

The meeting was adjourned.

Members Present:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Crawford	Rep. Hensley	Rep. Jarrell
Rep. Russell	Rep. Sherrill	

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 190 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE. STATE HOSPITALS TO SHARE PEER REVIEW INFORMATION WITH ACCREDITING ORGANIZATIONS

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H190-CSRH-001.1
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 190
THIS IS A DRAFT 16-MAR-99 09:22:30
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Hospitals/Peer Review/AB. (Public)

Sponsors:

Referred to: Judiciary II

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN FACILITIES TO SHARE PEER REVIEW INFORMATION WITH ACCREDITING ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-191(e) reads as rewritten:

"(e) For purposes of peer review functions only:

(1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the ~~committee; and~~ committee.

(2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that

results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about his testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

(3) Peer review information that is confidential and is immune from discovery or use in civil actions under subdivision (2) of this subsection may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification function. Information released under this subdivision shall be limited to that which is reasonably required by the review organization to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and immunity as provided under subdivision (2) of this subsection, and the organization shall keep the information confidential subject to that subdivision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 190*
Proposed Committee Substitute H190-PCS1079-RH

Short Title: State Hospitals/Peer Review/AB. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN FACILITIES TO SHARE PEER REVIEW INFORMATION WITH ACCREDITING ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-191(e) reads as rewritten:

"(e) For purposes of peer review functions only:

(1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the ~~committee; and~~ committee.

(2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the

committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about his testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

(3) Peer review information that is confidential and is immune from discovery or use in civil actions under subdivision (2) of this subsection may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification function. Information released under this subdivision shall be limited to that which is reasonably required by the review organization to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and immunity as provided under subdivision (2) of this subsection, and the organization shall keep the information confidential subject to that subdivision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 190*

Short Title: State Hospitals/Peer Review/AB. (Public)

Sponsors: Representative Cansler.

Referred to: Judiciary II.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STATE HOSPITALS TO SHARE PEER REVIEW INFORMATION WITH ACCREDITING ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-191 is amended by adding the following new subsections to read:

"(f) For purposes of this section, the release of any peer review information to any person, including a professional standards review organization, who contracts with an agency of this State or the federal government to perform any peer review function shall not constitute a waiver of any of the privileges granted pursuant to this section.

(g) Peer review information released to any person, including a professional standards review organization, who contracts with an agency of this State or the federal government to perform any accreditation or certification function shall be limited to that which is reasonably required by the review organization to grant or continue accreditation or certification."

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

HOUSE BILL 190:
State Hospitals/Peer Review/AB

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Cansler
Date:	March 15, 1999	**Summary by:**	Robin S. Johnson
Version:	PCS for 1st Edition		Committee Counsel
	H190-CSRH-001		

SUMMARY: The proposed committee substitute for House Bill 190 would allow the release of information gathered in connection with the peer review of facilities subject to the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985 (GS Ch. 122C). The release may be made to a professional standards review organization that contracts with a State or federal agency to perform any accreditation or certification function. The information must be reasonably required by the organization to grant or continue accreditation or certification. Information released would retain its status as privileged or confidential information that is exempt from public disclosure and from discovery or use in civil actions. The proposed committee substitute is effective when it becomes law.

CURRENT LAW: State hospitals and other facilities for the mentally ill, the developmentally disabled, and substance abusers are required to conduct peer reviews. Peer review proceedings, the records and materials produced by the review, and material considered by the review are confidential and are not public records. They are not subject to discovery or introduction in a civil action against the facility or provider of health services. However, when protected information is released to a non-State entity, it may lose its status as confidential information.

BACKGROUND: House Bill 190 is requested by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. Recently, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), which accredits the State psychiatric hospital, began requiring facilities to submit the results of peer review investigations. Refusing to share the information could jeapordize the hospital's accreditation. Sharing this information could remove its protection against public disclosure and could expose the State to civil liability.

This summary was contributed to by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DHHS).

H190-SMRH-001

privileges or employment of the provider. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about his testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

§ 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 286

Short Title: Adoption Records and Registry. (Public)

Sponsors: Representatives Earle; Braswell, Luebke, and Wainwright.

Referred to: Judiciary II, if favorable, Finance, if favorable, Appropriations.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADOPTION LAWS PERTAINING TO ACCESS TO ADOPTION RECORDS AND TO ESTABLISH AN ADOPTION REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11.

"Adoption Registry.

"**§ 48-11-101. Definitions.**

In this Article, the following definitions apply:

(1) 'Biological father' means any of the following:

a. A person presumed by law to be the biological father of the adoptee.

b. A person who has established paternity by affidavit under G.S. 130A-101(f) or judicially.

c. A person who has legitimated the adoptee under G.S. 49-10 or under a similar law of another state, or by marriage to the biological mother of the adoptee.

d. A person who has provided substantial financial support or consistent care with respect to the adoptee and biological mother prior to the adoption.

(2) 'Biological relative' means the adoptee's biological mother, biological father, or biological sibling.

(3) 'Biological sibling' includes a half-sibling related to the adoptee through the biological mother or through the biological father only as defined in subdivision (1) of this section.

"§ 48-11-102. Department to establish and maintain mutual consent, voluntary adoption registry.

The Department shall establish and maintain a statewide, confidential, mutual consent, voluntary adoption registry for receiving, filing, and retaining documents that request, authorize, or deny authorization of the release of identifying information. The purpose of the registry is to facilitate voluntary contact between adoptees and their biological relatives when both the adoptee and the biological relative consent to that contact.

"§ 48-11-103. Authorized users of the registry.

(a) Use of the registry is limited to adoptees and their biological relatives.

(b) No adoptee or biological relative shall be permitted to file a consent form with the registry until that person has reached the age of 18 years.

"§ 48-11-104. Information to be collected in the registry.

(a) A person eligible to use the registry may consent to the disclosure of identifying information about the person or request the disclosure of identifying information about an adoptee or a biological relative by filing with the Department a consent form that sets forth all of the following information to the extent known by the person submitting the form:

(1) The current name, address, and telephone number of the person submitting the form.

(2) Any prior names used by that person.

(3) The original and adopted name of the adoptee.

(4) The place of birth, date of birth, and sex of the adoptee.

(5) The name and address of the agency that placed the adoptee or prepared the report to the court.

(6) The persons to whom identifying information about the person submitting the consent form may be disclosed.

(7) If submitted by a biological relative, the relationship of that relative to the adoptee.

(b) The person submitting the consent form shall notify the registry of any change in that person's name, address, or telephone number that occurs after the person files the consent form.

(c) An adoptee or a biological relative may submit a denial of consent form with the registry.

(d) Either consent or denial of consent may be revoked at any time by a person who submitted the consent form or the denial of consent form by submitting a revocation form to the registry.

(e) The registry shall obtain only information necessary for identifying registrants. In no event shall the registry obtain or release information of any kind pertaining to the adoptive parents of or adoptive siblings to the adoptee.

"§ 48-11-105. Requirements for forms submitted to the registry.

(a) Each of the following requirements applies to any consent, denial of consent, or revocation form filed with the registry:

(1) It shall be notarized.

(2) It is effective as of the time it is filed with the registry.

(3) It may be revoked at any time by the person who submitted it.

(b) No consent, denial of consent, or revocation form shall be accepted by the registry until the person submitting it presents satisfactory proof of the person's identity in accordance with rules adopted by the Social Services Commission.

"§ 48-11-106. Disclosure of information contained in the registry.

(a) The Department shall process each consent form filed with the registry in an attempt to match the adoptee with a biological relative. There is a match when an adoptee and a biological relative have both filed consent forms with the registry designating the other as a person to whom identifying information may be disclosed. No identifying information about an adoptee may be disclosed to a biological relative unless that relative has been designated to receive identifying information by the adoptee on the adoptee's consent form.

(b) No identifying information shall be disclosed under this section until the Department determines there is a match. If the Department determines there is a match, then the Department shall, within one month of the filing of the latter of the corresponding consent forms, send a copy of the corresponding consent forms to the agency that placed the adoptee or prepared the report to the court. The agency shall then notify the persons who submitted the consent forms of the match and disclose to them the identifying information contained in the consent forms.

(c) If the agency that placed the adoptee or prepared the report to the court is no longer in existence at the time the Department determines there is a match, then any notification or disclosure required by this section shall be made by an employee or agent of the Department.

(d) All communications with adoptees and biological relatives required by this section shall be made by a social worker who has expertise in post-adoption services. These communications are confidential.

(e) If the Department has information that the person about whom identifying information is requested is deceased, the fact of the person's death shall be disclosed to the requesting person. No identifying information about the deceased person shall be disclosed, except pursuant to G.S. 48-9-104, unless the registry has on file an unrevoked consent form filed by the deceased person authorizing the disclosure of identifying information to the requesting person.

"§ 48-11-107. Recommendation of counseling.

The Department shall recommend to a person submitting any form to the registry that the person obtain counseling, voluntarily, at that person's own expense, from a licensed counselor.

"§ 48-11-108. Fees for using the registry.

The Department shall charge a fee of fifty dollars ($50.00) for filing a consent form or a denial of consent form with the registry at the time of filing. The fee shall be applied to the maintenance of the registry. Any fee authorized by this section may

be waived for any person who provides an affidavit of financial inability to pay the fee.

"**§ 48-11-109. Adoption of rules for the registry.**

The Social Services Commission shall adopt rules for use of and access to the registry in accordance with the requirements of this Article.

"**§ 48-11-110. Department to publicize the registry.**

The Department shall announce and publicize to the general public the existence of the registry and the procedure for the consensual release of identifying information.

"**§ 48-11-111. Department to provide necessary forms and cooperate with registries in other states.**

The Department shall develop and furnish any forms necessary to carry out the provisions of this Article. The Department shall cooperate with registries in other states to facilitate the matching of documents filed pursuant to this Article by individuals in different states.

"**§ 48-11-112. Violation and penalty.**

~~It~~ It is unlawful for a person having custody of or access to documents filed under this Article to disseminate or permit dissemination of information contained in them except as authorized by this Article. Any person who willfully violates the provisions of this section is guilty of a Class I felony."

Section 2. G.S. 48-10-105 reads as rewritten:

"**§ 48-10-105. Unauthorized disclosure of information.**

(a) Except as authorized in G.S. 48-3-205 or in Article 9 or Article 11 of this Chapter, no identifying or nonidentifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, an agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

(b) ~~A~~ Except as provided in G.S. 48-11-112, a person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

(c) The district court may enjoin from further violations any person who makes an unauthorized disclosure.

(d) Notwithstanding the penalties provided in subsection (b) of this section, an individual who is the subject of any of this information may bring a civil action for equitable or monetary relief or both against any person or entity who makes an unauthorized disclosure of the information."

Section 3. There is appropriated from the General Fund to the Department of Health and Human Services the sum of one hundred sixty-seven thousand dollars ($167,000) for the 1999-2000 fiscal year and the sum of one hundred sixty thousand dollars ($160,000) for the 2000-2001 fiscal year to establish and maintain the registry created in Article 11 of Chapter 48 of the General Statutes as enacted in Section 1 of this act.

Section 4. Section 3 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000. G.S. 48-11-112 as enacted

in Section 1 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET March 18, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rust	NCFPC
[illegible]	VISITOR
[illegible]	NC Medical Society
Steve Keene	NC Med Society
Katherine Miller	Harry Kapla
Lisa Reeks	THE INSIDER
Scott Mooney	AP
Michelle Cotton	DHHS/DOJ/SBI
Dave Horne	Smith Anderson

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 23, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 328

HOUSE BILL 478

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

JUDICIARY II
COMMITTEE MEETING MINUTES
12:00 P. M.
MARCH 23, 1999

The meeting was called to order by the Chairman, Rep. Braswell, and he recognized Kimberly Vance and Craig Simmons, the Pages assisting the committee.

The bills before the committee were House Bill 328, sponsored by Rep. Braswell and Kiser, and House Bill 478, sponsored by Rep. Jarrell. The Chair asked that House Bill 478 be heard first. A motion was made by Rep. Sherrill to place House Bill 478 before the committee for discussion.

Rep. Jarrell and Staff Counsel, Robin Johnson explained the bill. Peg Dorer, of the Conference of District Attorneys voiced the support of this bill by the District Attorney's Association. An amendment was submitted by Rep. Jarrell to amend the bill on page 2, line 27 (See attached amendment), and she moved for adoption of the amendment. The Committee passed the amendment. A technical amendment to amend the bill on page 2, line 29 was also submitted by Rep. Jarrell and was adopted by the committee.

Rep. Michaux moved that the amendments be incorporated into the Proposed Committee Substitute and that the Proposed Committee Substitute for House Bill 478 be given a favorable report. The committee approved the motion. The Committee Substitute for House Bill 478 was given a favorable report and the original House Bill 478 was given an unfavorable report.

Rep. Braswell presented House Bill 328 to the committee. He indicated that Staff Counsel would explain the bill and the committee would have an opportunity to begin the discussion of the bill at this meeting and would conclude the discussion at the next meeting. Staff Counsel, Steve Rose, was recognized and he gave an explanation of the bill.

An amendment was submitted by Rep. Braswell to amend the bill on page 3, line 44, and on page 4, lines 1 through 4 (See attached amendment). The Assistant Chair, Rep. Michaux, presided over the meeting for the submission and adoption of the amendment by Rep. Braswell. A motion to adopt the amendment was made by Rep. Sherrill and was passed by the committee. Rep. Braswell asked that the committee continue the discussion of House Bill 328 at the next meeting.

The meeting was adjourned.

Members Present:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Crawford	Rep. Hensley	Rep. Jarrell
Rep. Russell	Rep. Sherrill	Rep. Michaux
Rep. Capps	Rep. Kiser	

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 478 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF THREATENING JUDGES, DISTRICT ATTORNEYS, AND OTHER COURT OFFICERS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 478

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H478-ARH-002

Date March 23, 1999

Comm. Sub. []
Amends Title []

Representative Jarrell

moves to amend the bill on page 2, line 27, by deleting the word "attorney." and by substituting the phrase "attorney; or public defender or assistant defender.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 478

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H478-ARH-001

Page 1 of __

Technical Amendment

Date March 23 ,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Jarrell

moves to amend the bill on page 2, line 29, by deleting the word "Executive" and by substituting the word "Legislative".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 478
Proposed Committee Substitute H478-PCS1098-RH

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF THREATENING JUDGES, DISTRICT ATTORNEYS, AND OTHER COURT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 5A.

"Endangering ~~Executive and Legislative~~ Executive, Legislative, and Court Officers.

"**§ 14-16.6. Assault on ~~executive or legislative~~ executive, legislative, or court officer.**

(a) Any person who assaults any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer named in G.S. 147-3(c),~~ officer, or court officer, or any person who makes a violent attack upon the residence, office, temporary accommodation or means of transport of any ~~legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c)~~ one of those officers in a manner likely to endanger ~~such legislative officer or executive~~ the officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who commits an offense under subsection (a) and uses a deadly weapon in the commission of that offense shall be punished as a Class F felon.

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer as named in G.S. 147-3(c)~~ officer, or court officer, shall be punished as a Class F felon.

"**§ 14-16.7. Threats against ~~executive or legislative~~ executive, legislative, or court officers.**

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official~~ officer, ~~as named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document containing a threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official~~ officer, ~~named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

"**§ 14-16.8. No requirement of receipt of the threat.**

In prosecutions under G.S. 14-16.7 of this Article it shall not be necessary to prove that any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official as named in G.S. 147- 3(c)~~ officer, or court officer actually received the threatening communication or actually believed the threat.

"**§ 14-16.9. Officers-elect to be covered.**

Any person who has been elected to any office covered by this Article but has not yet taken the oath of office shall be considered to hold the office for the purpose of this Article and G.S. 114-1.

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; or any attorney licensed to practice in the General Court of Justice.

(2) Executive officer. -- A person named in G.S. 147-3(c).

(3) Legislative officer. -- A person named in G.S. 147-2(1), (2), or (3)."

Section 2. G.S. 114-15(a) reads as rewritten:

"(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the

Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or ~~(3)or~~ (3), any executive officer named in G.S. ~~147-3(c).~~ 147-3(c), or any court officer as defined in G.S. 14-16.10(1). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 478

Short Title: Threaten Court Officers. (Public)

Sponsors: Representatives Jarrell; and Barefoot.

Referred to: Judiciary II.

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF THREATENING JUDGES, DISTRICT ATTORNEYS, AND OTHER COURT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 5A.

"Endangering ~~Executive and Legislative~~ Executive, Legislative, and Court Officers.

"**§ 14-16.6. Assault on ~~executive or legislative~~ executive, legislative, or court officer.**

(a) Any person who assaults any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer named in G.S. 147-3(e),~~ officer, or court officer, or any person who makes a violent attack upon the residence, office, temporary accommodation or means of transport of any ~~legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(e)~~ one of those officers in a manner likely to endanger ~~such legislative officer or executive~~ the officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who commits an offense under subsection (a) and uses a deadly weapon in the commission of that offense shall be punished as a Class F felon.

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer as named in G.S. 147-3(e)~~ officer, or court officer, shall be punished as a Class F felon.

"**§ 14-16.7. Threats against ~~executive or legislative~~ executive, legislative, or court officers.**

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official~~ officer, ~~as named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document containing a threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official~~ officer, ~~named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

"**§ 14-16.8. No requirement of receipt of the threat.**

In prosecutions under G.S. 14-16.7 of this Article it shall not be necessary to prove that any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~official as named in G.S. 147-3(c)~~ officer, or court officer actually received the threatening communication or actually believed the threat.

"**§ 14-16.9. Officers-elect to be covered.**

Any person who has been elected to any office covered by this Article but has not yet taken the oath of office shall be considered to hold the office for the purpose of this Article and G.S. 114-1.

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; pub defender, Asst

(2) Executive officer. -- A person named in G.S. 147-3(c).

(3) ~~Executive~~ officer. -- A person named in G.S. 147-2(1), (2), or (3)."

Section 2. G.S. 114-15(a) reads as rewritten:

"(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State

when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or ~~(3)or~~ (3), any executive officer named in G.S. ~~147-3(c).~~ 147-3(c), or any court officer as defined in G.S. 14-16.10(1). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 478:
Threaten Court Officers.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Jarrell
Date:	March 23, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 478 would amend Article 5A of Chapter 14 of the General Statutes to make assault upon a court officer a Class I felony, assault upon a court officer with a deadly weapon or with serious bodily injury a Class F felony, and threatening to kill or inflict serious bodily injury upon any court officer a Class I felony. Court officers would include magistrates, clerks of superior court, acting clerks, assistant or deputy clerk, judges, or justices of the General Court of Justice, district attorneys, assistant district attorneys, or other attorneys designated by the district attorney to act on behalf of the district attorney or to act for the State. The bill also would authorize the State Bureau of Investigation to investigate, without request, these assaults or threats. The bill would take effect December 1, 1999, and would apply to offenses committed on or after that date.

CURRENT LAW: Generally, the following applies:

- Simple assaults are Class 1 to Class 2 misdemeanors, punishable with 1-45 days of community punishment to active punishments of 1-120 days, and fines up to $1000 or within the discretion of the court.
    - Simple assaults on legislative or executive officers are Class I felonies, punishable with 3-8 months of community punishment to 6-12 months of active incarceration. This offense includes violent attacks upon an officer's residence, office, temporary accommodation, or means of transport.
- Assaults with a deadly weapon or with serious bodily injury are Class A1 misdemeanors or Class F felonies, punishable with 1-60 days of community punishment up to 49 months of active incarceration, and fines within the discretion of the court.
    - These assaults on legislative or executive officers are Class F felonies, punishable with 10-20 months of intermediate punishment to 23-49 months of active incarceration.
- Threats to kill or inflict serious bodily injury are Class 1 misdemeanors, punishable with 1-60 days of community punishment up to 150 days of active punishment, and fines within the discretion of the court.
    - These threats, when made against legislative or executive officers, are Class I felonies, punishable with 3-8 months of community punishment to 6-12 months of active incarceration. The officer is not required to have actually received the threat.

Legislative officers include the 170 legislators and the Speaker of the House of Representatives. Executive officers are either civil or military officers (see attached G.S. 147-3 for list).

The SBI has authority to investigate, without request, any assault upon or threat against a legislative or executive officer.

§ 147-2. Legislative officers.

The legislative officers are:

(1) Fifty Senators;

(2) One hundred and twenty members of the House of Representatives;

(3) A Speaker of the House of Representatives;

§ 147-3. Executive officers.

(a) Executive officers are either:

(1) Civil;

(2) Military.

(b) Civil executive officers are:

(1) General, or for the whole State;

(2) Special, or for special duties in different parts of the State;

(3) Local, or for a particular part of the State.

(c) The general civil executive officers of this State are as follows:

(1) A Governor;

(2) A Lieutenant Governor;

(3) Private secretary for the Governor;

(4) A Secretary of State;

(5) An Auditor;

(6) A Treasurer;

(7) An Attorney General;

(8) A Superintendent of Public Instruction;

(9) The members of the Governor's Council;

(10) A Commissioner of Agriculture;

(11) A Commissioner of Labor;

(12) A Commissioner of Insurance.

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties; or

(5) Assaults a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus.

§ 14-34. Assaulting by pointing gun.

If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class A1 misdemeanor.

§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.

Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony.

§ 14-118.4. Extortion.

Any person who threatens or communicates a threat or threats to another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and such person shall be punished as a Class F felon.

§ 14-277.1. Communicating threats.

(a) A person is guilty of a Class 1 misdemeanor if without lawful authority:

(1) He willfully threatens to physically injure the person or damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is a Class 1 misdemeanor.

FELONY PUNISHMENT CHART

(Effective for offenses committed on or after 12/1/95)

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts.	II 1 - 4 Pts.	III 5 - 8 Pts.	IV 9 - 14 Pts.	V 15 - 18 Pts.	VI 19 + Pts.
A	Death or Life Without Parole					
B1	A 240 - 300 192 - 240 144 - 192	A 288 - 360 230 - 288 173 - 230	A 336 - 420 269 - 336 202 - 269	A 384 - 480 307 - 384 230 - 307	A Life Without Parole 346 - 433 260 - 346	A Life Without Parole 384 - 480 288 - 384
B2	A 157 - 196 125 - 157 94 - 125	A 189 - 237 151 - 189 114 - 151	A 220 - 276 176 - 220 132 - 176	A 251 - 313 201 - 251 151 - 201	A 282 - 355 225 - 282 169 - 225	A 313 - 392 251 - 313 188 - 251
C	A 73 - 92 58 - 73 44 - 58	A 100 - 125 80 - 100 60 - 80	A 116 - 145 93 - 116 70 - 93	A 133 - 167 107 - 133 80 - 107	A 151 - 188 121 - 151 90 - 121	A 168 - 210 135 - 168 101 - 135
D	A 64 - 80 51 - 64 38 - 51	A 77 - 95 61 - 77 46 - 61	A 103 - 129 82 - 103 62 - 82	A 117 - 146 94 - 117 71 - 94	A 133 - 167 107 - 133 80 - 107	A 146 - 183 117 - 146 88 - 117
E	I/A CPP 25 - 31 20 - 25 15 - 20	I/A CPP 29 - 36 23 - 29 17 - 23	A 34 - 42 27 - 34 20 - 27	A 40 - 50 32 - 40 24 - 32	A 46 - 58 37 - 46 28 - 37	A 53 - 67 42 - 53 32 - 42
F	I/A CPP 16 - 20 13 - 16 10 - 13	I/A CPP 19 - 24 15 - 19 11 - 15	I/A CPP 21 - 26 17 - 21 13 - 17	A 25 - 31 20 - 25 15 - 20	A 34 - 42 27 - 34 20 - 27	A 39 - 49 31 - 39 23 - 31
G	I/A CPP 13 - 16 10 - 13 8 - 10	I/A CPP 15 - 19 12 - 15 9 - 12	I/A CPP 16 - 20 13 - 16 10 - 13	I/A CPP 20 - 25 16 - 20 12 - 16	A 21 - 26 17 - 21 13 - 17	A 29 - 36 23 - 29 17 - 23
H	C/I/A CPP 6 - 8 5 - 6 4 - 5	I/A CPP 8 - 10 6 - 8 4 - 6	I/A CPP 10 - 12 8 - 10 6 - 8	I/A CPP 11 - 14 9 - 11 7 - 9	I/A CPP 15 - 19 12 - 15 9 - 12	A 20 - 25 16 - 20 12 - 16
I	C 6 - 8 4 - 6 3 - 4	C/I 6 - 8 4 - 6 3 - 4	I 6 - 8 5 - 6 4 - 5	I/A CPP 8 - 10 6 - 8 4 - 6	I/A CPP 9 - 11 7 - 9 5 - 7	I/A CPP 10 - 12 8 - 10 6 - 8

Note:

C - Community Punishment
- Unsupervised Probation
- Fines or Day Fines
- Treatment Alternatives to Street Crime (TASC)
- Out-Patient Substance Abuse and Mental Health Treatment
- Victim Restitution
- Community Service Work
- Regular Supervised Probation

I - Intermediate Punishment
- Community Penalty Plan Accepted By Judge
- Intensive Supervision Probation
- House Arrest
- Day Reporting Center
- Residential Facility
- Boot Camp
- Split Sentence / Special Probation

A - Active Incarceration

DISPOSITION
Aggravated Range
PRESUMPTIVE RANGE
Mitigated Range

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

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

H328-ARL-001

Date 23 March, 1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Braswell

moves to amend the bill on page 3, line 44,
by placing a quotation mark at the end of the period and deleting
the balance of that line; and

further amends the bill on page 4, lines 1 through 4, by deleting
those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 328

Short Title: Sent. Commn/Crim Law Changes/AB. (Public)

Sponsors: Representatives Braswell and Kiser (Primary Sponsors).

Referred to: Judiciary II.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107 reads as rewritten:

"**§ 14-107. Worthless checks.**

(a) It ~~shall be~~ is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering ~~such~~ the check or ~~draft as aforesaid,~~ draft, that the maker or drawer ~~thereof~~ of it has not sufficient funds on deposit in or credit with ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(b) It ~~shall be~~ is unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(c) The word "credit" as used ~~herein shall be construed to mean~~ in this section means an arrangement or understanding with the bank or depository for the payment of ~~any such~~ a check or draft.

(d) A violation of this section ~~shall be~~ is a Class I felony if the amount of the check or draft is more than two thousand dollars ($2,000). If the amount of the check or draft is two thousand dollars ($2,000) or less, a violation of this section ~~shall be~~ is a misdemeanor punishable as follows:

(1) Except as provided in subdivision (3) or (4) of this subsection, ~~If the amount of the check or draft is not over one hundred dollars ($100.00),~~ the person is guilty of a Class 2 misdemeanor. Provided, however, if ~~such~~ the person has been convicted three times of violating ~~G.S. 14-107, he~~ this section, the person shall on the fourth and all subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

~~(2) If the amount of the check or draft is over one hundred dollars ($100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.~~

(3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.

(4) If the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

(e) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Section 2. G.S. 14-229 reads as rewritten:

"**§ 14-229. Acting as officer before qualifying as such.**

If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a Class 1 misdemeanor and shall be ejected from his office."

Section 3. 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 or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 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)) 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.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior 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 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 4. G.S. 19A-35 reads as rewritten:

"**§ 19A-35. Penalty for failure to adequately care for animals; disposition of animals.**

Failure of any person licensed or registered under this Article to adequately house, feed, and water animals in his possession or custody shall constitute a Class 3 misdemeanor, and such person shall be subject to a fine of not less than five dollars ($5.00) per animal or more than a total of one thousand dollars ($1,000). Such animals shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director and such failure shall also constitute grounds for revocation of license after public hearing. ~~The Director is~~

hereby authorized to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals until either sold or euthanized and any fine levied in connection with this section shall be applied toward reimbursement of such State funds as the Director shall have expended."

Section 5. G.S. 106-418.14 reads as rewritten:

"**§ 106-418.14. Penalties.**

Any person who violates G.S. 106-418.10(1) ~~may be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days.~~ is guilty of a Class 3 misdemeanor. For a second or subsequent violation of G.S. 106-418.10(1), a person ~~may be fined not in excess of five hundred dollars ($500.00) or imprisoned for not in excess of six months, or both fined and imprisoned.~~ is guilty of a Class 2 misdemeanor."

Section 6. G.S. 106-549.35(a) reads as rewritten:

"(a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article ~~shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine;~~ is guilty of a Class 2 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation ~~shall be subject to imprisonment for not more than three years or~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or both:~~ ($10,000). Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him."

Section 7. G.S. 106-549.59 reads as rewritten:

"**§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.**

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than three years or both.~~ ($10,000). When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or

failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article ~~shall be fined~~ is guilty of a Class 2 misdemeanor which may include a fine of not more than five thousand dollars ~~($5,000) or imprisoned not more than three years, or both.~~ ($5,000). Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, ~~shall be fined~~ is guilty of a Class A1 misdemeanor which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than 10 years, or both.~~ ($10,000)."

Section 8. G.S. 106-549.71 reads as rewritten:

"**§ 106-549.71. Penalty for violation.**

Any person, firm or corporation violating the provisions of this Article ~~shall, upon conviction, be fined or imprisoned in the discretion of the court.~~ is guilty of a Class 1 misdemeanor."

Section 9. G.S. 106-549.88 reads as rewritten:

"**§ 106-549.88. Penalties.**

Any person who violates any provisions of this Article or any regulations thereunder ~~shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment.~~ is guilty of a Class 2 misdemeanor."

Section 10. G.S. 113-337(b) reads as rewritten:

"(b) Each person convicted of violating the provisions of this Article ~~shall in addition to any other penalty prescribed in the discretion of the court be fined not less than one hundred dollars ($100.00) upon the first conviction, and not less than five hundred dollars ($500.00) upon any subsequent conviction.~~ is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

North Carolina General Assembly
Legislative Services Office

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March 23, 1999

MEMORANDUM

TO: **House Judiciary II Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 328; Sentencing Commission technical corrections bill**

House Bill 328 makes various technical corrections to certain criminal laws and criminal penalties. It is recommended by the North Carolina Sentencing and Policy Advisory Commission.

Section 1 amends G.S. 14-107, which makes it unlawful to issue a check when one knows there are insufficient funds to cover it. As presently written, G.S. 14-107(d) provides sentencing categories for checks not over $100 (a Class 2 misdemeanor unless three previous convictions, in which case it is a Class 1 misdemeanor); checks over $100 up to $2,000 (Class 2 misdemeanor unless there are three previous convictions, in which case it is a Class 1 misdemeanor at the discretion of the judge); checks in excess of $2,000 (Class I felony). The amendment combines the penalties for checks in the amount of $2,000 or less, making all such violations a Class 2 misdemeanor unless there are three previous convictions, in which case it is a Class 1 misdemeanor. Other changes are stylistic in nature.

Section 2 of the bill amends the penalty portion of G.S. 14-229, which presently makes it an unspecified misdemeanor for an officer to enter on the duties of his office before executing and delivering the necessary bonds and taking the necessary oath. The amendment specifies that a violation is a Class 1 misdemeanor.

Section 3 amends G.S. 15A-1340.14(b) which deals with the assignment of points for prior convictions for the purpose of arriving at proper sentencing. During the 1998 Short Session, impaired driving in a commercial vehicle, G.S. 20-138.2, was reclassified from a Class 1 misdemeanor under Structured Sentencing to an unclassified misdemeanor punishable in accordance with the impaired driving statutes. G.S. 15A-1340.14(b) was not amended to conform with that change. The amendment changes the definition of a misdemeanor for the purpose of the subsection in question to include Class A1 and Class 1 non-traffic misdemeanors,

impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle, but excludes any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

Section 4 of the bill amends G.S. 19A-35, which provides the penalty for failure to adequately care for animals in animal shelters, pet shops, boarding kennels, and other animal dealers. The present penalty for failure to properly house, feed, and water animals is an unspecified misdemeanor with a fine of not less than $5 and not more than $1,000. The amendment changes this to a Class 3 misdemeanor, with the fine remaining as is. It should be pointed out that as presently written the statute authorizes the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to sell or euthenize animals seized because of a violation of the Animal Welfare Act once there is a conviction of a person under the Article. The act authorizes the Director to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals, and further provides that fines levied because of violation of the act shall be applied toward reimbursement of funds the Director has expended in providing for the welfare of the animals. These last two provisions appear to be in violation of the executive Budget Act and the Constitution of North Carolina. The provision authorizing the Director "to disburse State funds in such amount as in his discretion is necessary" would allow the Director to expend funds from the General Fund without a specific appropriation, thus violating the Executive Budget Act and Article V, Section 7 of the State Constitution, and the provision allowing fines levied to be applied toward reimbursement of these funds would appear to violate Article IX, Section 7 of the constitution which provides that the clear proceeds of fines collected from breach of State penal laws shall belong to the counties to be used exclusively for maintaining free public schools. It is suggested that the bill be amended to eliminate the last sentence of G.S. 19A-35.

Section 5 amends G.S. 106-418.14 dealing with penalties under the Livestock Dealer Licensing Act. It changes a provision specifying particular penalties for a first offense and subsequent offenses. The amendments would classify a first offense as a Class 3 misdemeanor, and subsequent offenses as Class 2 misdemeanors.

Section 6 amends G.S. 106-549.35(a) which sets out the punishment for violations of the meat inspections statutes. The punishments were not reclassified under the Structured Sentencing Act or the Fair Sentencing Act. The amendment would provide that a violation is a Class 2 misdemeanor, instead of the present maximum imprisonment of 6 months, a fine not exceeding $500, or both. If the violation involves intent to defraud or distribution of adulterated food, a violation would be a Class H felony, and may include a maximum fine of $10,000. Presently the punishment specified is a maximum 3 years imprisonment and the possible inclusion of the fine.

Section 7 of the bill amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The penalties were never reclassified under Structured Sentencing or the Fair Sentencing Act. The amendments would make violations a Class 1 misdemeanor (instead of a fine of not more than $1,000 and/or imprisonment of not more than one year), and where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine (presently it is imprisonment for not more than three years and/or the fine). This section also amends subsection (c) of G.S. 106-549.59 which provides the penalty for a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Act in question.

Present penalty provides for a fine of not more than $5,000 or imprisonment for not more than three years, or both. This violation becomes a Class 2 misdemeanor and may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, a violation is a Class A1 misdemeanor and may include a maximum $10,000 fine, in lieu of the present penalty of imprisonment of not more than 10 years and/or the $10,000 fine.

Section 8 amends G.S. 106-549.71 which provides the penalty for improper disposal of dead or diseased poultry on commercial farms. The offense was not classified under the Structured Sentencing Act and presently provides for a fine or imprisonment in the discretion of the court. The amendment would make this a Class 1 misdemeanor.

Section 9 of the bill amends G.S. 106-549.88 which provides the penalties for illegal acts involving biological residues in animals. The offense was not classified under Structured Sentencing. The present penalty of a maximum $500 fine, imprisonment not to exceed 6 months, or both, is changed to a Class 2 misdemeanor.

Section 10 of the bill provides the penalties for possessing, transporting, or selling animals on a protected wild animal list. This provision was not classified under Structured Sentencing and presently provides for minimum fines of $100 for a first conviction and $500 on a subsequent conviction, in addition to any other penalty prescribed in the discretion of the court. The amendment makes this a Class 1 misdemeanor.

Section 11 of the act is the effective date. The act is effective December 1, 1999, and applies to acts committed on or after that date.

H328-SMRL-001

VISITOR REGISTRATION SHEET
JUDICIARY II

3-23-94

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
HORRIN FREEMAN	sentencing commission
John Madler	Sentencing Commission
Pat Dorer	Conference of D. As
Mat Osborne	AOC
LISA REYES	THE INSIDER
Cindy Elder	NC Retail Merchants Assoc.

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 25 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 328

SENATE BILL 310

SENATE BILL 311

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, MARCH 25, 1999

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the meeting were Jenilee Fleetwood and Joey Deegeling.

The bills on the agenda were HB 328, sponsored by Rep. Braswell and Rep. Kiser, and SB 310 and SB 311 sponsored by Senator Miller.

Senator Miller was recognized to explain **Senate Bill 310, (Short title: Amend Time for Notice of Appeal).** Rep. Barefoot presented an amendment to SB 310 and moved for adoption of the amendment. Rep. Michaux made a motion that the amendment be incorporated into a committee substitute and that the committee substitute be given a favorable report and an unfavorable report be given to the original bill. The Committee gave the committee substitute a favorable report and an unfavorable report to the original bill.

Senator Miller explained **Senate Bill 311, (Short title: Modify Summons Under Rule 4).** Rep. Kiser made a motion for a favorable report for Senate Bill 311. The Committee gave the bill a favorable report.

The next bill up for discussion was **HB 328 (Short title: Sent. Commn/Crim Law Changes/AB).** Rep. Braswell and Rep. Kiser were the sponsors for the bill. At the previous meeting Rep. Russell had raised the question of what wildlife was referred to in one of the statues that was being amended, and a concern of why this bill only included dogs and cats. Staff Counsel, Steve Rose, provided the committee with the North Carolina State and Federally Listed Wildlife Species. Dr. M. A. Mixon, the State Veterinarian under the Department of Agriculture, addressed the concern of why cats and dogs and not other animals are covered under the animal protection act. The Chairman asked Rep. Michaux to preside over the meeting for the vote on HB 328. Rep. Braswell moved for a favorable report on HB 328 as amended and an unfavorable report on the original bill. The Committee gave the amended bill a favorable report and an unfavorable report to the original bill.

There being no further business before the committee, the meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Jarrell
Rep. Kiser	Rep. Russell	Rep. Sherrill

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell
Committee Chair

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **JERRY BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 310 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 310

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

S310-ARL-001

Date March 25, 1999

Comm. Sub. []
Amends Title [YES]

Rep Senator Miller

moves to amend the bill on page 1, line 6, by rewriting that line to read:
"RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING, AND TO PROVIDE THAT THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATION ORDINANCES SHALL BE NINETY DAYS FROM THE ENTRY OF THE ORDER."; and

on page 3, lines 29 through 33, by rewriting those lines to read:
"Section 6. G.S. 160A-50(g) reads as rewritten:
'(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 310

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

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.'

Section 7. G.S. 160A-38(g) reads as rewritten:

'(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed and void.'

Section 8. Sections 1 and 4 of this act become effective when this act becomes law, and apply to actions filed on or after

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 310

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

S310-ARL-001

that date. Sections 1 and 4 of this act expire July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and apply to actions filed on or after that date. Sections 6 and 7 of this act become effective October 1, 1999, and apply to ordinances remanded on or after that date. The remainder of this act is effective when this act becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 310

Short Title: Amend Time for Notice of Appeal. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.34 reads as rewritten:

"**§ 7A-289.34. Appeals; modification of order after affirmation.**

Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered."

Section 2. Effective July 1, 1999, G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"**§ 7B-1112. Appeals; modification of order after affirmation.**

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 3. Effective July 1, 1999, G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 4. G.S. 7A-725 reads as rewritten:

"**§ 7A-725. Appeals.**

Any petitioner, parent, or guardian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the judge may enter a temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State."

Section 5. Effective July 1, 1999, G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3508. Appeals.**

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 6. Sections 1 and 4 of this act become effective when this act becomes law, and apply to actions filed on or after that date. Sections 1 and 4 of this act expire July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and apply to actions filed on or after that date. The remainder of this act is effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 310
Proposed House Committee Substitute S310-PCS4607-RL

Short Title: Amend Time for Notice of Appeal. (Public)

Sponsors:

Referred to:

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING, AND TO PROVIDE THAT THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATION ORDINANCES SHALL BE NINETY DAYS FROM THE ENTRY OF THE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.34 reads as rewritten:

"**§ 7A-289.34. Appeals; modification of order after affirmation.**

Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made

by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered."

Section 2. Effective July 1, 1999, G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"**§ 7B-1112. Appeals; modification of order after affirmation.**

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 3. Effective July 1, 1999, G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be

detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 4. G.S. 7A-725 reads as rewritten:

"**§ 7A-725. Appeals.**

Any petitioner, parent, or guardian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the judge may enter a temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State."

Section 5. Effective July 1, 1999, G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3508. Appeals.**

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 6. G.S. 160A-50(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the

municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 7. G.S. 160A-38(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 8. Sections 1 and 4 of this act become effective when this act becomes law and apply to actions filed on or after that date. Sections 1 and 4 of this act expire July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and apply to actions filed on or after that date. Sections 6 and 7 of this act become effective October 1, 1999, and apply to ordinances remanded on or after that date. The remainder of this act is effective when this act becomes law.

SENATE BILL 310:
Amend Time for Notice of Appeal in Juvenile Proceedings

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Miller
Date:	March 25, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

Senate Bill 310 amends the statutes governing the time when notice of appeal must be given in cases of termination of parental rights, emancipation of minors, and orders to transfer a juvenile to Superior Court. At present, the notice of appeal must be given in open court at the hearing or in writing within 10 days after the hearing. The amendments in Senate Bill 310 change the time in which written notice of appeal may be given, making it 10 days after the entry of the order, rather than 10 days after the hearing.

Sections 1 and 2 of the bill make the notice of appeal changes in statutes relating to the determination of parental rights. Section 1 amends the existing statute, G.S. 7A-289.34, which expires July 1, 1999, and Section 2 makes the same amendment to the section that replaces it effective July 1, 1999 (the Juvenile Justice Reform Act of 1998).

Section 3 amends G.S. 7B-2603, which becomes effective July 1, 1999, and governs appeals from orders transferring juvenile cases to the Superior Court.

Sections 4 and 5 are the old and new provisions, respectively, governing appeals from orders of emancipation. Again, the changes are restricted to the point from which the time for written notice of appeal is measured.

Sections 1 and 4 of the act become effective when it becomes law and apply to actions filed on or after the effective date. These sections expire July 1, 1999, when the new Juvenile Code becomes effective. Sections 2, 3, and 5, which contain amendments to the new Juvenile Code, become effective July 1, 1999, and apply to actions filed on or after that date.

S310-SMRL-001

NORTH CAROLINA
1899 – 1999
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SB 310 Amend Time for Notice of Appeal - A Summary

Background:
A number of attorneys in the North Carolina Bar Association Family Law Section have noted a problem with N.C.G.S. §7A-289.34, which governs the time for appeal in termination of parental rights (TPR) cases. This has become particularly apparent to those who represent county departments of social services (DSS), with the recent mandates that DSS move children out of foster care and into permanent adoptive homes more quickly than in the past.

Current Law:
Counsel representing DSS and those representing parents in TPR cases have found confusion when trying to determine when the time for appeal of TPR orders begins to run. §7A-289.34 provides that the appeal is timely if given "within 10 days after the hearing." In practice, the order is rarely prepared within 10 days of the hearing, thus requiring the parent to appeal before the order is entered. If the judge takes the case under advisement and renders his decision several weeks later (which is not unheard of), a literal reading of §7A-289.34 would require notice of appeal be given *before the parties knew who won the case*. The statute governing appeals from other juvenile orders (§7A-666) specifies "after entry of the order."

SB 310 Changes:
SB 310 changes the language in §7A-289.34 "10 days after the hearing" to "10 days after entry of the order." (A parallel change is made to §7B-1112, where this provision is recodified as part of the Juvenile Justice Reform Act of 1998, S.L. 1998-202.) This makes the TPR statute operate fairly and consistently and brings it in line with the juvenile appeals statute. Additionally, the statutes governing bind-over (transfer of juvenile cases to district court) at §7B-2603, and emancipation at §7A-725 and §7B-3508 are amended similarly. With the changes, the time for appeal in all of these proceedings are measured the same way. The North Carolina Bar Association recommends the General Assembly enact this legislation.

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Section by Section summary:

Section 1: §7A-289.34 is amended to remove the words "the hearing" and replace them with "entry of the order" to address the problem discussed above.

Section 2: A similar change is made in §7B-1112, where §7A-289.34 was recodified as part of the Juvenile Justice Reform Act of 1998, S.L. 1998-202, section 6.

Section 3: A similar change is made to the bind-over provisions in the Juvenile Justice Reform Act at §7B-2603.

Section 4: A similar change is made to the emancipation provisions at §7A-725.

Section 5: §7B-3508 recodifies §7A-725, and so, a similar change is made here.

Section 6: The effective date clause which specifies applicability generally to actions subject to the old law under Ch. 7A prior to July 1, 1999 (the effective date of the Juvenile Justice Reform Act) and to actions filed under the new law after that time.

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1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **JERRY BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B.. 311 A BILL TO BE ENTITLED AN ACT TO MODIFY RULE 4 OF THE RULES OF CIVIL PROCEDURE TO EXTEND THE LENGTH OF THE LIFE OF A SUMMONS AND TO ABOLISH ENDORSEMENT AS A MEANS OF REVIVING A SUMMONS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 311

Short Title: Modify Summons Under Rule 4. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY RULE 4 OF THE RULES OF CIVIL PROCEDURE TO EXTEND THE LENGTH OF THE LIFE OF A SUMMONS AND TO ABOLISH ENDORSEMENT AS A MEANS OF REVIVING A SUMMONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(c) reads as rewritten:

"(c) Summons -- ~~Return. -- Personal~~ Time allowed for service. -- Subject to Rule 4(d), (d1), and (d2), personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) ~~a and b~~ a. and b. must be made within ~~30~~ 90 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is ~~60~~ 120 days. ~~When~~

(c1) Summons -- Return. -- When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its ~~service.~~

~~Failure to make service within the time allowed or failure~~ service. Failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of ~~such~~ the time allowed by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons ~~therefor~~ as to every ~~such~~ party not served, but failure to comply with this requirement shall not invalidate the summons."

Section 2. G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- ~~Extension; endorsement, alias and pluries.~~ Extension of time for serving. -- When any defendant in a civil action is not served with the original summons within the time allowed for ~~service,~~ service under Rule 4(c), the action may be continued in existence as to ~~such~~ that unserved 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~~ the plaintiff suing 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.~~ after the issuance of the original summons. The alias or pluries summons shall be returned in the manner prescribed under Rule 4(c1). Subsequent alias or pluries summons, returnable in the same manner as the original summons, may be sued out at any time within 90 days after the date of issuance of the last preceding summons in the chain of summonses.

~~Provided, in~~ (d1) Summons -- Extension of time for serving in tax and assessment foreclosures. -- 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~~ an alias or pluries summons may be sued out at any time within two years after the issuance of the original ~~summons, and after~~ summons. After the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

~~Provided, for~~ (d2) Summons -- Extension of time for serving defendant not within the Unites States. -- 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~~ States at the time the action is commenced, an alias or pluries summons may be sued out at any time within two years after the issuance of the original ~~summons, and after~~ summons. 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.~~ summonses."

Section 3. G.S. 1A-1, Rule 4(e) reads as rewritten:

"(e) Summons -- Discontinuance. -- When ~~there is neither endorsement by the clerk nor issuance of~~ an alias or pluries summons is not issued within the time specified in Rule 4(d), (d1), and (d2), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, ~~or an extension be endorsed by the clerk,~~ but, as to such defendant, the action shall be deemed to have commenced on the date of such ~~issuance or endorsement.~~ issuance."

Section 4. G.S. 1A-1, Rule 4(f) reads as rewritten:

"(f) Summons -- Date of multiple summonses. -- If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of ~~such~~ that separate or additional summonses shall be considered the same as that of the original summons for purposes of ~~endorsement or~~ alias or pluries summons under Rule ~~4(d).~~ 4(d), (d1), and (d2)."

Section 5. G.S. 1A-1, Rule 4(g) reads as rewritten:

"(g) Summons -- Docketing by clerk. -- The clerk shall keep a record in which ~~he~~ the clerk shall note the day and hour of issuance of every summons, whether original, alias, ~~pluries, or endorsement thereon.~~ or pluries. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or ~~non-service.~~ nonservice."

Section 6. This act becomes effective October 1, 1999, and applies to causes of action filed on or after that date.

SENATE BILL 311:
Modify Summons Under Rule 4

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Miller
Date:	March 25, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

Senate Bill 311 amends Rule 4 of the North Carolina Rules of Civil Procedure. It extends the time period within which an original summons may be served and simplifies the extension process for the summons when it is not served during the original time period. The current time period for service is 30 days after issuance of the summons, but the plaintiff may obtain an additional 60-day extension. The changes will allow 90 days for the initial period of service.

Section 1 amends Rule 4(c) by changing the current 30 day life of a summons to 90 days. Tax and assessment foreclosure summonses change from a 60-day present life to 120 days.

Section 2 of the bill amends Rule 4(d). It is rewritten to remove the "endorsement" method of extending the life of the summons, but leaves the more widely used alias or pluries method of extending the life of the summons.(An "alias" summons is the term used for the second summons issued. "Pluries" is the summons used for a summons issued for the third or more times.) The alias or pluries summons must be obtained within 90 days of the issuance of the original summons. Thereafter, the additional summonses must be obtained within 90 days of the date of issuance of the preceeding summons. Conforming changes are made to those parts of Rule 4 dealing with tax and assessment foreclosures and service of defendants not within the United States.

Section 3 amends Rule 4(e) to remove references to the endorsement process, which is eliminated in Section 2 of the bill.

Section 4 makes conforming changes to Rule 4(f).

Section 5 makes conforming changing to Rule 4(g).

The act is effective October 1, 1999 and applies to causes of action filed on or after that date.

S311-SMRL-001

Rule 4. Process.

(a) *Summons — Issuance: who may serve.* — Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons — Contents.* — The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) *Summons — Return.* — Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) *Summons — Extension; endorsement, alias and pluries.* — When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in 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.

(e) *Summons — Discontinuance.* — When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

(f) *Summons — Date of multiple summonses.* — If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of such separate or additional summonses shall be considered the same as that of the original summons for purposes of endorsement or alias summons under Rule 4(d).

(g) *Summons — Docketing by clerk.* — The clerk shall keep a record in which he shall note the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement thereon. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service.

(h) *Summons — When proper officer not available.* — If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the

same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) *Summons — When process returned unexecuted.* — If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) *Summons — Amendment.* — At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) *Process — Manner of service to exercise personal jurisdiction.* — In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. — Except as provided in subsection (2) below, upon a natural person:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. — Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process

shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. — Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general.

(4) An Agency of the State. —

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. —

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of

commissioners for such county or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, or (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, or (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii).

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina.

(6) Domestic or Foreign Corporation. — Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service or [of] process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

(7) Partnerships. — Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or

by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. — Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(j1) *Service by publication on party that cannot otherwise be served.* — A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has

been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION
STATE OF NORTH CAROLINA _____ COUNTY

In the _____ Court

[Title of action or special proceeding] To [Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, 19____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows:

(State nature.)

You are required to make defense to such pleading not later than (_____, 19____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, 19____

_____ (Attorney) (Party)

_____ (Address)

(j2) *Proof of service.* — Proof of service of process shall be as follows:

(1) Personal Service. — Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified Mail. — Before judgment by default may be had on service by registered or certified mail, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(4). This affidavit together with the return receipt signed by the person who received the mail if not the addressee raises a presumption that the person who received the mail and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on

the day the summons and complaint are delivered to the address.

(3) Publication. — Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2).

(j3) *Service in a foreign country.* — Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

b. As directed by the foreign authority in response to a letter rogatory or letter of request; or

c. Unless prohibited by the law of the foreign country, by

1. Delivery to the individual personally of a copy of the summons and the complaint and, upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;

2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.

(j4) *Process or judgment by default not to be attacked on certain grounds.* — No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) *Personal jurisdicti*
personally, or through the
service of process by nota
the signature of the party
an original or copy of a s
the same force and effect
by delivery of copy and
signing said acceptance.

(k) *Process — Manner*
quasi in rem. — In any
having jurisdiction of t
exercise of jurisdiction in
1-75.8, the manner of ser

(1) Defendant Know
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process in secti
(j1); except that
in (j1) shall be
action is pendin
with section (j2

(2) Defendant Unkn
may be design
served by publi
(j1), except that
in (j1) shall be
action is pendin
with section (j2
1971, c. 962; c. 1
1-3; 1981, c. 38
1989, c. 330; c.
3; c. 509, s. 135

Local Modification. —
By virtue of Session Laws 19
s. 4, Wake: 1995, c. 441, s. 1
stricken from the main volum

Editor's Note. —
The subdivision (j)(9) desig
assigned by the Revisor of St
designation in Session Laws 1

I. In General.
II. Personal Service on Na
A. In General.
C. Service by Register
IV. Service on Corporation
V. Service by Publication.
VI. Amendment of Summo
VII. Discontinuance and Ex

I. IN GENERAL.

Summons Must Be Serv
30 Days. — Under this rule,
must be served within 30
issuance. Dozier v. Crandal

(j5) *Personal jurisdiction by acceptance of service.* — Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(k) *Process — Manner of service to exercise jurisdiction in rem or quasi in rem.* — In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of service of process shall be as follows:

(1) Defendant Known. — If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

(2) Defendant Unknown. — If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2). (1967, c. 954, s. 1; 1969, c. 895, ss. 1-4; 1971, c. 962; c. 1156, s. 2; 1975, cc. 408, 609; 1977, c. 910, ss. 1-3; 1981, c. 384, s. 3; c. 540, ss. 1-8; 1983, c. 679, ss. 1, 2; 1989, c. 330; c. 575, ss. 1, 2; 1995, c. 275, s. 1; c. 389, ss. 2, 3; c. 509, s. 135.1(e), (f); 1997-469, s. 1.)

Local Modification. —

By virtue of Session Laws 1997, c. 450, s. 4, Wake: 1995, c. 441, s. 1 should be stricken from the main volume.

Editor's Note. —

The subdivision (j)(9) designation was assigned by the Revisor of Statutes, the designation in Session Laws 1995, c. 389, s. 2 having been (j)(10).

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, added the third paragraph of subsection (d).

Legal Periodicals. —

For 1997 Legislative Survey, see 20 Campbell L. Rev. 399.

CASE NOTES

I. In General.
II. Personal Service on Natural Persons.
A. In General.
C. Service by Registered or Certified Mail.
IV. Service on Corporations.
V. Service by Publication.
VI. Amendment of Summons.
VII. Discontinuance and Extensions.

I. IN GENERAL.

Summons Must Be Served Within 30 Days. — Under this rule, a summons must be served within 30 days of its issuance. Dozier v. Crandall, 105 N.C. App. 74, 411 S.E.2d 635, cert. denied, 332 N.C. 480, 420 S.E.2d 826 (1992).

Basis for 30 Day Delivery. — This rule does not require delivery of the summons to the sheriff within thirty days of its issuance in order that the

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

8000 Weston Parkway
Post Office Box 3688
Cary, North Carolina 27519-3688
919.677.0561/800.662.7407
facsimile 919.677.0761
http://www.barlinc.org

SB 311 Modify Summons under Rule 4 - A summary

Background:
N.C.G.S. §1A-1 contains the Rules of Civil Procedure, which govern civil legal proceedings in our state courts. Rule 4 governs service of process in a civil proceeding and specifically, the summons. During committee discussions during the 1997 session, Sen. Fountain Odom, Rep. Phil Baddour and others requested that the Bar Association review the time periods governing summons in Rule 4. They requested that the Association propose revisions to the Rule to make it clearer and easier to understand and use. SB 311 embodies these suggestions. Prior to its introduction, the draft was widely circulated to representatives of the insurance industry, the plaintiffs' bar, the defense bar, city and county governments, the Medical Society, the Sheriff's Association and the Attorney General's office. No objection was noted from any of these groups to the proposed changes. The North Carolina Bar Association recommends these changes to the General Assembly for enactment.

Current Law:
Current law provides under Rule 4(c) that a summons must be served within 30 days after its issuance by the clerk of court (except for tax and assessment foreclosures, which are 60 days). Before the end of the 30 days, the plaintiff may obtain an extension from the clerk of court by an endorsement or by obtaining an alias or pluries summons (the two processes yield the same practical result). If the plaintiff waits and the summons expires, it can endorsed or an alias or pluries obtained any time within 90 days of issuance of the original summons or of the last endorsement/alias or pluries.

SB 311 Changes:
The significant changes in SB 311 are:

1. Extend the life of a summons to 90 days from the current 30;
2. Move to one method of summons extension, by abolishing the little-used endorsement procedure in favor of the widely-used alias or pluries procedure.

The changes are intended to make our judicial system more efficient and to get rid of the "dead

time" associated with a summons if it is not able to be served within 30 days. Currently, if a summons is issued and not served within 30 days, it expires. However, the party is given an addtional 60 days to seek an extension; this often delays the proceeding. The change will provide a longer initial period for service, and longer extensions, but will remove the dead time.

The move to one system of extension was based on the belief that very few attorneys use the endorsement process and its appearance in the rule only serves to confuse lawyers, parties and the court. The way to revive a summons if service does not occur within 90 days will now be exclusively with an alias or pluries-- one method, less confusion.

The balance of the changes to Rule 4's subsections are conforming to the above two changes or are clarifying changes designed to make the provisions more readable without changing the meaning.

Section by Section summary:

Section 1: This section modifies Rule 4(c) to move from the current 30 days to the new 90 day life for a summons. Tax and assessment foreclosure summonses are valid for 120 days (up from the current 60). The remaining changes are stylistic.

Section 2: Rule 4(d) is rewritten to remove the endorsement procedure in favor of the alias or pluries procedure. As amended, the plaintiff will obtain issuance of a summons from the clerk of court and then be required to renew it prior to 90 days from issuance via an alias or pluries from the clerk. Similar changes are made to the tax and assessment foreclosures under (d1) and cases involving foreign defendants under (d2). Language pertaining to endorsement is removed.

Section 3: Rule 4(e) is amended to remove references to the endorsement procedure.

Section 4: Rule 4(f) is similarly amended.

Section 5: Rule 4(g) is similarly amended and made gender-neutral.

Section 6: This legislation is effective as to actions filed on or after October 1, 1999.

25977 10 March 1999

WILLIAM G. SCOGGIN, DIRECTOR OF GOVERNMENTAL AFFAIRS
BSCOGGIN@MAIL.BARLINC.ORG • 919.677.0561 EXTENSION 340

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **JERRY BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 328 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

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

H328-ARL-001

Date_____,1999

Comm. Sub. []
Amends Title []

Representative Braswell

moves to amend the bill on page 3, line 44,
by placing a quotation mark at the end of the period and deleting
the balance of that line; and

further amends the bill on page 4, lines 1 through 4, by deleting
those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 328
Proposed Committee Substitute H328-PCS7106-RL

Short Title: Sent. Commn/Crim Law Changes/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107 reads as rewritten:

"**§ 14-107. Worthless checks.**

(a) It ~~shall be~~ is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering ~~such~~ the check or ~~draft as aforesaid,~~ draft, that the maker or drawer ~~thereof~~ of it has not sufficient funds on deposit in or credit with ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(b) It ~~shall be~~ is unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

Section 5. G.S. 106-418.14 reads as rewritten:

"**§ 106-418.14. Penalties.**

Any person who violates G.S. 106-418.10(1) ~~may be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days.~~ is guilty of a Class 3 misdemeanor. For a second or subsequent violation of G.S. 106-418.10(1), a person ~~may be fined not in excess of five hundred dollars ($500.00) or imprisoned for not in excess of six months, or both fined and imprisoned.~~ is guilty of a Class 2 misdemeanor."

Section 6. G.S. 106-549.35(a) reads as rewritten:

"(a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article ~~shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine;~~ is guilty of a Class 2 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation ~~shall be subject to imprisonment for not more than three years or~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or both:~~ ($10,000). Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him."

Section 7. G.S. 106-549.59 reads as rewritten:

"**§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.**

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than three years or both.~~ ($10,000). When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding,

or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article ~~shall be fined~~ is guilty of a Class 2 misdemeanor which may include a fine of not more than five thousand dollars ~~($5,000) or imprisoned not more than three years, or both.~~ ($5,000). Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, ~~shall be fined~~ is guilty of a Class A1 misdemeanor which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than 10 years, or both.~~ ($10,000)."

Section 8. G.S. 106-549.71 reads as rewritten:

"**§ 106-549.71. Penalty for violation.**

Any person, firm or corporation violating the provisions of this Article ~~shall, upon conviction, be fined or imprisoned in the discretion of the court.~~ is guilty of a Class 1 misdemeanor."

Section 9. G.S. 106-549.88 reads as rewritten:

"**§ 106-549.88. Penalties.**

Any person who violates any provisions of this Article or any regulations thereunder ~~shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment.~~ is guilty of a Class 2 misdemeanor."

Section 10. G.S. 113-337(b) reads as rewritten:

"(b) Each person convicted of violating the provisions of this Article ~~shall in addition to any other penalty prescribed in the discretion of the court be fined not less than one hundred dollars ($100.00) upon the first conviction, and not less than five hundred dollars ($500.00) upon any subsequent conviction.~~ is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 328

Short Title: Sent. Commn/Crim Law Changes/AB. (Public)

Sponsors: Representatives Braswell and Kiser (Primary Sponsors).

Referred to: Judiciary II.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107 reads as rewritten:

"**§ 14-107. Worthless checks.**

(a) It ~~shall be~~ is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering ~~such~~ the check or ~~draft as aforesaid,~~ draft, that the maker or drawer ~~thereof~~ of it has not sufficient funds on deposit in or credit with ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(b) It ~~shall be~~ is unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(c) The word "credit" as used ~~herein shall be construed to mean~~ in this section means an arrangement or understanding with the bank or depository for the payment of ~~any such~~ a check or draft.

(d) A violation of this section ~~shall be~~ is a Class I felony if the amount of the check or draft is more than two thousand dollars ($2,000). If the amount of the check or draft is two thousand dollars ($2,000) or less, a violation of this section ~~shall be~~ is a misdemeanor punishable as follows:

(1) Except as provided in subdivision (3) or (4) of this subsection, ~~If the amount of the check or draft is not over one hundred dollars ($100.00),~~ the person is guilty of a Class 2 misdemeanor. Provided, however, if ~~such~~ the person has been convicted three times of violating ~~G.S. 14-107, he~~ this section, the person shall on the fourth and all subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

~~(2) If the amount of the check or draft is over one hundred dollars ($100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.~~

(3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.

(4) If the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

(e) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Section 2. G.S. 14-229 reads as rewritten:

"**§ 14-229. Acting as officer before qualifying as such.**

If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a Class 1 misdemeanor and shall be ejected from his office."

Section 3. 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 or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 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)) 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.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior 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 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 4. G.S. 19A-35 reads as rewritten:

"**§ 19A-35. Penalty for failure to adequately care for animals; disposition of animals.**

Failure of any person licensed or registered under this Article to adequately house, feed, and water animals in his possession or custody shall constitute a Class 3 misdemeanor, and such person shall be subject to a fine of not less than five dollars ($5.00) per animal or more than a total of one thousand dollars ($1,000). Such animals shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director and such failure shall also constitute grounds for revocation of license after public hearing. The Director is

hereby authorized to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals until either sold or euthanized and any fine levied in connection with this section shall be applied toward reimbursement of such State funds as the Director shall have expended."

Section 5. G.S. 106-418.14 reads as rewritten:

"**§ 106-418.14. Penalties.**

Any person who violates G.S. 106-418.10(1) ~~may be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days.~~ is guilty of a Class 3 misdemeanor. For a second or subsequent violation of G.S. 106-418.10(1), a person ~~may be fined not in excess of five hundred dollars ($500.00) or imprisoned for not in excess of six months, or both fined and imprisoned.~~ is guilty of a Class 2 misdemeanor."

Section 6. G.S. 106-549.35(a) reads as rewritten:

"(a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article ~~shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine;~~ is guilty of a Class 2 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation ~~shall be subject to imprisonment for not more than three years or~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or both:~~ ($10,000). Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him."

Section 7. G.S. 106-549.59 reads as rewritten:

"**§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.**

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than three years or both.~~ ($10,000). When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or

failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article ~~shall be fined~~ is guilty of a Class 2 misdemeanor which may include a fine of not more than five thousand dollars ~~($5,000) or imprisoned not more than three years, or both.~~ ($5,000). Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, ~~shall be fined~~ is guilty of a Class A1 misdemeanor which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than 10 years, or both.~~ ($10,000)."

Section 8. G.S. 106-549.71 reads as rewritten:

"**§ 106-549.71. Penalty for violation.**

Any person, firm or corporation violating the provisions of this Article ~~shall, upon conviction, be fined or imprisoned in the discretion of the court.~~ is guilty of a Class 1 misdemeanor."

Section 9. G.S. 106-549.88 reads as rewritten:

"**§ 106-549.88. Penalties.**

Any person who violates any provisions of this Article or any regulations thereunder ~~shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment.~~ is guilty of a Class 2 misdemeanor."

Section 10. G.S. 113-337(b) reads as rewritten:

"(b) Each person convicted of violating the provisions of this Article ~~shall in addition to any other penalty prescribed in the discretion of the court be fined not less than one hundred dollars ($100.00) upon the first conviction, and not less than five hundred dollars ($500.00) upon any subsequent conviction.~~ is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

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March 23, 1999

MEMORANDUM

TO: **House Judiciary II Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 328; Sentencing Commission technical corrections bill**

House Bill 328 makes various technical corrections to certain criminal laws and criminal penalties. It is recommended by the North Carolina Sentencing and Policy Advisory Commission.

Section 1 amends G.S. 14-107, which makes it unlawful to issue a check when one knows there are insufficient funds to cover it. As presently written, G.S. 14-107(d) provides sentencing categories for checks not over $100 (a Class 2 misdemeanor unless three previous convictions, in which case it is a Class 1 misdemeanor); checks over $100 up to $2,000 (Class 2 misdemeanor unless there are three previous convictions, in which case it is a Class 1 misdemeanor at the discretion of the judge); checks in excess of $2,000 (Class I felony). The amendment combines the penalties for checks in the amount of $2,000 or less, making all such violations a Class 2 misdemeanor unless there are three previous convictions, in which case it is a Class 1 misdemeanor. Other changes are stylistic in nature.

Section 2 of the bill amends the penalty portion of G.S. 14-229, which presently makes it an unspecified misdemeanor for an officer to enter on the duties of his office before executing and delivering the necessary bonds and taking the necessary oath. The amendment specifies that a violation is a Class 1 misdemeanor.

Section 3 amends G.S. 15A-1340.14(b) which deals with the assignment of points for prior convictions for the purpose of arriving at proper sentencing. During the 1998 Short Session, impaired driving in a commercial vehicle, G.S. 20-138.2, was reclassified from a Class 1 misdemeanor under Structured Sentencing to an unclassified misdemeanor punishable in accordance with the impaired driving statutes. G.S. 15A-1340.14(b) was not amended to conform with that change. The amendment changes the definition of a misdemeanor for the purpose of the subsection in question to include Class A1 and Class 1 non-traffic misdemeanors,

impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle, but excludes any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

Section 4 of the bill amends G.S. 19A-35, which provides the penalty for failure to adequately care for animals in animal shelters, pet shops, boarding kennels, and other animal dealers. The present penalty for failure to properly house, feed, and water animals is an unspecified misdemeanor with a fine of not less than $5 and not more than $1,000. The amendment changes this to a Class 3 misdemeanor, with the fine remaining as is. It should be pointed out that as presently written the statute authorizes the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to sell or euthenize animals seized because of a violation of the Animal Welfare Act once there is a conviction of a person under the Article. The act authorizes the Director to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals, and further provides that fines levied because of violation of the act shall be applied toward reimbursement of funds the Director has expended in providing for the welfare of the animals. These last two provisions appear to be in violation of the executive Budget Act and the Constitution of North Carolina. The provision authorizing the Director "to disburse State funds in such amount as in his discretion is necessary" would allow the Director to expend funds from the General Fund without a specific appropriation, thus violating the Executive Budget Act and Article V, Section 7 of the State Constitution, and the provision allowing fines levied to be applied toward reimbursement of these funds would appear to violate Article IX, Section 7 of the constitution which provides that the clear proceeds of fines collected from breach of State penal laws shall belong to the counties to be used exclusively for maintaining free public schools. It is suggested that the bill be amended to eliminate the last sentence of G.S. 19A-35.

Section 5 amends G.S. 106-418.14 dealing with penalties under the Livestock Dealer Licensing Act. It changes a provision specifying particular penalties for a first offense and subsequent offenses. The amendments would classify a first offense as a Class 3 misdemeanor, and subsequent offenses as Class 2 misdemeanors.

Section 6 amends G.S. 106-549.35(a) which sets out the punishment for violations of the meat inspections statutes. The punishments were not reclassified under the Structured Sentencing Act or the Fair Sentencing Act. The amendment would provide that a violation is a Class 2 misdemeanor, instead of the present maximum imprisonment of 6 months, a fine not exceeding $500, or both. If the violation involves intent to defraud or distribution of adulterated food, a violation would be a Class H felony, and may include a maximum fine of $10,000. Presently the punishment specified is a maximum 3 years imprisonment and the possible inclusion of the fine.

Section 7 of the bill amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The penalties were never reclassified under Structured Sentencing or the Fair Sentencing Act. The amendments would make violations a Class 1 misdemeanor (instead of a fine of not more than $1,000 and/or imprisonment of not more than one year), and where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine (presently it is imprisonment for not more than three years and/or the fine). This section also amends subsection (c) of G.S. 106-549.59 which provides the penalty for a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Act in question.

Present penalty provides for a fine of not more than $5,000 or imprisonment for not more than three years, or both. This violation becomes a Class 2 misdemeanor and may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, a violation is a Class A1 misdemeanor and may include a maximum $10,000 fine, in lieu of the present penalty of imprisonment of not more than 10 years and/or the $10,000 fine.

Section 8 amends G.S. 106-549.71 which provides the penalty for improper disposal of dead or diseased poultry on commercial farms. The offense was not classified under the Structured Sentencing Act and presently provides for a fine or imprisonment in the discretion of the court. The amendment would make this a Class 1 misdemeanor.

Section 9 of the bill amends G.S. 106-549.88 which provides the penalties for illegal acts involving biological residues in animals. The offense was not classified under Structured Sentencing. The present penalty of a maximum $500 fine, imprisonment not to exceed 6 months, or both, is changed to a Class 2 misdemeanor.

Section 10 of the bill provides the penalties for possessing, transporting, or selling animals on a protected wild animal list. This provision was not classified under Structured Sentencing and presently provides for minimum fines of $100 for a first conviction and $500 on a subsequent conviction, in addition to any other penalty prescribed in the discretion of the court. The amendment makes this a Class 1 misdemeanor.

Section 11 of the act is the effective date. The act is effective December 1, 1999, and applies to acts committed on or after that date.

H328-SMRL-001



North Carolina's State and Federally Listed Wildlife Species

As of June, 1997

The species listed in this document have been granted protection by the United States Fish and Wildlife Service, under the Federal Endangered Species Act (16 U.S.C. 1531 to 1543) and/or the North Carolina Wildlife Resources Commission, under the State Endangered Species Act (G.S. 113-331 to 113-337). This list was updated as of June, 1997.

Legend

E - Endangered
any native or once native species of wild animal whose continued existence as a viable component of the state's fauna is determined by the Wildlife Resources Commission to be in jeopardy or any wild animal determined to be an "endangered animal" pursuant to the Endangered Species Act

T - Threatened
any native or once native species of wild animal that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated "threatened" pursuant to the Endangered Species Act

SC - Special Concern
any species of wild animal native or once native to North Carolina that is determined by the Wildlife Resources Commission to require monitoring but that may be taken under regulations adopted under the provisions of Article 25

COASTAL PLAIN REGION

	Common Name	Federal Status	State Status	Common Name	Federal Status	State Status
Mammals	Bat, Brazilian free-tailed		SC	Rat, eastern wood		T
	Bat, Rafinesque's big-eared		SC	Shrew, Dismal Swamp southern	T	T
	Cougar, eastern	E	E	Wolf, red	E	*
	Mole, star-nosed		SC			
Birds	Eagle, southeastern bald	E	E	Shrike, loggerhead		SC
	Egret, snowy		SC	Skimmer, black		SC
	Falcon, American eastern peregrine	E	E	Sparrow, Bachman's		SC
	Falcon, Arctic peregrine	T	T	Stork, wood	E	E
	Hawk, Cooper's		SC	Tern, gull-billed		T
	Heron, little blue		SC	Tern, roseate	E	E
	Heron, tricolor		SC	Vulture, black		SC
	Ibis, glossy		SC	Warbler, Kirtland's	E	E
	Pelican, brown		SC	Woodpecker, ivory-billed	E	E
	Plover, piping	T	T	Woodpecker, red-cockaded	E	E
Reptiles	Alligator, American	T(S/A)	T	Turtle, green (Atlantic)	T	T
	Lizard, mimic glass		SC	Turtle, hawksbill (Atlantic)	E	E
	Snake, Carolina salt marsh		SC	Turtle, Kemp's (Atlantic) ridley	E	E
	Snake, northern pine		SC	Turtle, leatherback	E	E
	Snake, Outer Banks king-		SC	Turtle, loggerhead	T	T
	Terrapin, diamondback		SC			
Amphibians	Frog, Carolina crawfish		SC	Salamander, eastern tiger		T
	Frog, river		SC	Salamander, four-toed		SC
	Salamander, dwarf (silver morph)		SC	Waterdog, Neuse River		SC
Fish	Carpsucker, highfin		SC	Lamprey, least brook		SC
	Chub, Sandhills		SC	Madtom, broadtail		SC
	Chub, thinlip		SC	Madtom, Carolina		SC
	Darter, pinewoods		SC	Shiner, bridle		SC
	Darter, Waccamaw		T	Silverside, Waccamaw	T	T
	Killifish, bluefin		SC	Sturgeon, Atlantic		SC
	Killifish, least		SC	Sturgeon, shortnose	E	E
	Killifish, Waccamaw		SC	Sunfish, Carolina pygmy		T
Mussels	Fatmucket, Waccamaw		T	Lilliput, Savannah		T
	Floater, alewife		SC	Mucket, tidewater		SC
	Floater, barrel		E	Mussel, dwarf wedge	E	E
	Floater, green		E	Mussel, Tar River spiny	E	E
	Floater, triangle		T	Pigtoe, Atlantic		T
	Lampmussel, eastern		SC	Pondmussel, eastern		SC
	Lampmussel, Waccamaw		SC	Slabshell, Roanoke		T
	Lampmussel, yellow		T	Spike, Cape Fear		T
	Lance, pod		SC	Spike, Neuse		E
	Lance, yellow		T	Spike, Waccamaw		T
Snails	Ambersnail, Waccamaw		T	Rams-horn, magnificent		E
	Amnicola, Waccamaw		SC	Siltsnail, Waccamaw		SC
	Ancylid, blackwater		SC	Threetooth, Cape Fear		T
	Rams-horn, Greenfield		SC			

Legend

E - *Listed federally and/or state*
T - *Listed federally and/or state*
T(S/A) - *Listed federally as threatened "due to similarity of appearance"*
SC - *State listed as special concern*
* - *This animal is an experimental population released into the wild. It is not listed by the state.*

PIEDMONT REGION



	Common Name	Federal Status	State Status	Common Name	Federal Status	State Status
Mammals	Bat, Keen's		SC	Cougar, eastern	E	E
	Bat, southeastern		SC			
Birds	Eagle, southeastern bald	E	E	Vulture, black		SC
	Hawk, Cooper's		SC	Warbler, Bachman's	E	E
	Shrike, loggerhead		SC	Warbler, Kirtland's	E	E
	Sparrow, Bachman's		SC	Woodpecker, red-cockaded	E	E
Reptiles	Turtle, bog		T			
Amphibians	Salamander, four-toed		SC	Salamander, Wehrle's		T
	Salamander, mole		SC	Waterdog, Neuse River		SC
Fish	Carpsucker, highfin		SC	Madtom, orangefin		E
	Darter, Carolina		SC	Minnow, cutlips		E
	Darter, riverweed		SC	Redhorse, river		SC
	Jumprock, bigeye		SC	Shiner, Cape Fear	E	E
	Lamprey, least brook		SC	Sucker, rustyside		E
	Madtom, Carolina		SC			
Mussels	Creekshell, Carolina		SC	Lilliput, Savannah		T
	Elktoe, Carolina		SC	Mucket, tidewater		SC
	Floater, brook		T	Mussel, dwarf wedge	E	E
	Floater, green		E	Mussel, Tar River spiny	E	E
	Floater, triangle		T	Pigtoe, Atlantic		T
	Heelsplitter, Carolina	E	E	Slabshell, Roanoke		T
	Lampmussel, eastern		SC	Spike, Neuse		E
	Lampmussel, yellow		T	Squawfoot		T
	Lance, yellow		T			
Snails	Ancylid, blackwater		SC	Threetooth, dwarf		SC

Legend

E - *Listed federally and/or state*
T - *Listed federally and/or state*
SC - *State listed as special concern*
* - *This animal is an experimental population released into the wild. It is not listed by the state.*

Your donations to the Nongame and Endangered Wildlife Program mean that many endangered species have a chance for survival. Please keep giving. Make your contribution directly or through the state income tax checkoff to the Nongame & Endangered Wildlife Fund, N.C. Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, N.C. 27604-1188.

Produced by the Division of Conservation Education, N.C. Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, N.C. 27604-1188. The N.C Wildlife Resources Commission is an equal opportunity agency.

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This publication was printed on recycled paper.

MOUNTAIN REGION

	Common Name	Federal Status	State Status	Common Name	Federal Status	State Status
Mammals	Bat, gray	E	E	Mole, star-nosed		SC
	Bat, Indiana	E	E	Rat, eastern wood		SC
	Bat, Keen's		SC	Squirrel, Carolina northern flying	E	E
	Bat, Rafinesque's big-eared		SC	Shrew, long-tailed		SC
	Bat, small-footed		SC	Shrew, pygmy		SC
	Bat, southeastern		SC	Shrew, water		SC
	Bat, Virginia big-eared	E	E	Vole, rock		SC
	Cougar, eastern	E	E	Wolf, red	E	*
Birds	Chickadee, black-capped		SC	Kinglet, golden-crowned		SC
	Eagle, southeastern bald	E	E	Owl, northern saw-whet		SC
	Falcon, American eastern peregrine	E	E	Shrike, loggerhead		SC
	Flycatcher, olive-sided		SC	Vulture, black		SC
	Hawk, Cooper's		SC	Wren, Bewick's		E
Reptiles	Snake, eastern smooth green		SC	Turtle, eastern spiny softshell		SC
	Snake, northern pine		SC	Turtle, stripeneck musk		SC
	Turtle, bog		T			
Amphibians	Frog, mountain chorus		SC	Salamander, Junaluska		SC
	Hellbender, eastern		SC	Salamander, longtail		SC
	Mudpuppy		SC	Salamander, mole		SC
	Salamander, crevice		SC	Salamander, Weller's		SC
	Salamander, four-toed		SC	Salamander, zigzag		SC
	Salamander, green		E			
Fish	Carpsucker, river		SC	Drum, freshwater		T
	Chub, roseface		T	Lamprey, American brook		T
	Chub, spotfin	T	T	Logperch		T
	Dace, rosyside		SC	Logperch, blotchside		E
	Darter, blueside		SC	Madtom, mountain		SC
	Darter, dusky		E	Minnow, Kanawha		SC
	Darter, longhead		SC	Mooneye		SC
	Darter, olive		SC	Paddlefish		E
	Darter, sharphead		T	Sculpin, banded		T
	Darter, sharpnose		SC	Shiner, striped		T
	Darter, Tennessee snubnose		SC	Shiner, yellowfin		SC
	Darter, turquoise		SC	Stonecat		E
	Darter, wounded		SC	Sturgeon, lake		SC
Mussels	Creekshell, mountain		T	Mudalia, scep		T
	Elimia, knotty		E	Mussel, littlewing pearly	E	E
	Elktoe, Appalachian		E	Mussel, slippershell		E
	Floater, brook		T	Pigtoe, Tennessee		E
	Floater, green		E	Pistolgrip		E
	Heelsplitter, Tennessee		E	Rainbow, Alabama		SC
	Lampmussel, wavy-rayed		SC	Spike		SC
Snails	Coil, fringed		SC	Glyph, fragile		E
	Coil, spiral		SC	Glyph, honey		SC
	Covert, big-tooth		T	Glyph, pink		SC
	Covert, Clingman		T	Lancetooth, blue-foot		SC
	Covert, engraved		T	Mantleslug, black		SC
	Covert, Smoky Mountain		T	Slitmouth, Great Smoky		SC
	Covert, velvet		SC	Supercoil, glossy		SC
	Crater, queen		SC	Supercoil, high mountain		SC
	Disc, saw-tooth		SC	Supercoil, lamellate		SC
	Dome, bidentate		SC	Supercoil, Mirey Ridge		SC
	Globe, dwarf proud		SC	Supercoil, open		SC
	Globe, noonday	T	T	Supercoil, ramp cove		SC
	Gloss, Appalachian		SC	Supercoil, Roan		T
	Glyph, dark		SC	Supercoil, sculpted		T

END

VISITOR REGISTRATION SHEET
JUDICIARY II

25 March 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McCord	NCDA+CS
M. A. Mitchell	NCDA+CS
Laura Hartsell	NC Bar Association
John Madler	Sentencing Commission.
Lorrin Freeman	Sentencing Commission
FRAN PRESTON	NCRMLS
ANDY ELLEN	"

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

MARCH 30 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 493

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, MARCH 30, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell. Kema Winston was the Page assisting the Committee.

The Bill on the agenda was House Bill 493, sponsored by Rep. Michaux. The Chairman stated that the bill would be brought before the Committee on today for discussion and would be voted on at a later date after hearing from all those who desired to speak on the bill.

Rep. Michaux was recognized to explain **HB 493, (Short title: Abolish Alien. Affect./Crim. Conv.).** House Bill 493 would abolish the common law causes of action for alienation of affection and criminal conversation.

Bill Brooks of the North Carolina Family Policy Council spoke in opposition to this bill.

Jonathan McGirt of the Family Law Section of the North Carolina Bar Association spoke in support of this bill.

Staff Counsel, Steve Rose, was asked to comment on the bill and to explain some of the legal terminology used in the bill. Thirty-five states and the District of Columbia have abolished these torts by statue and five states have done it by court decision. Mr. McGirt stated that few of these cases rarely go to trial. Questions from committee members included the following: (1) the number of these suits that are filed a year; (2) how many are successful; (3) a breakdown by gender; (4) the results of such claims. Staff counsel was directed to research these questions and the committee would continue the discussion of this bill at another meeting.

There being no further business before the committee, the meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Crawford
Rep. Hensley	Rep. Jarrell	Rep. Kiser
Rep. Russell	Rep. Sherrill	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 493

Short Title: Abolish Alien. Affect./Crim. Conv. (Public)

Sponsors: Representatives Fitch, Michaux (Primary Sponsors); Hunter, McAllister, and Nesbitt.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 52 of the General Statutes is amended by adding a new section to read:

"**§ 52-13. Abolition of alienation of affection cause of action.**

The common law cause of action for alienation of affection is abolished."

Section 2. Chapter 52 of the General Statutes is amended by adding a new section to read:

"**§ 52-14. Abolition of criminal conversation cause of action.**

The common law cause of action for criminal conversation is abolished."

Section 3. This act is effective when it becomes law. This act does not affect cases pending when the act becomes law.

HOUSE BILL 493:
Abolish Actions for Alienation of Affection and Criminal Conversation

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Rep. Fitch & Michaux
Date:	March 30, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 493 abolishes the common law causes of action for alienation of affection and criminal conversation.

Section 1 enacts G.S. 52-13 which abolishes the common law cause of action for alienation of affection. Alienation of affection is a common law tort that allows a civil action to be brought where a third party has alienated the affections of the plaintiff's spouse. The elements of the tort are as follows:

1. The plaintiff must be married to the person whose affections are alienated by the defendant.

2. The loss of affection or consortium must occur.

3. The defendants must have acted wrongfully or willfully.

4. There must be a causal connection between the loss of affection or consortium and the defendant's conduct.

Section 2 enacts G.S. 52-14 which abolishes the common law cause of action for criminal conversation. The elements of the tort of criminal conversation are:

1. The plaintiff must have been married to the person with whom the defendant had intercourse.

2. The sexual intercourse of the defendant with the plaintiff's spouse occurred during the marriage.

The act is effective when it becomes law and does not affect cases pending when the act becomes law.

VISITOR REGISTRATION SHEET
JUDICIARY II

30 March 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CHRIS DERRICK	VISITOR
BILL BROOKS	NCFPC
Charles Cromer	NCATL
Scott Hammack	NCATL
BILL SCOGGIN	NC BAR
JON McGIRT	Cheshire, Parker
Dennis Patterson	AP
Laura Hartsell	NC Bar Association
Tobias Hamilton	CALNC

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

April 6, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 493

HOUSE BILL 286

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, APRIL 6, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the committee were Montreal Brown and Stephanie Ashburn.

The Bills on the agenda were HB 493, sponsored by Rep. Michaux, and HB 286, sponsored by Rep. Earle.

The Committee continued their discussion of **HB 493 (Short title: Abolish Alien. Affect./Crim. Conv).** The Chair recognized those persons who had requested an opportunity to speak on the bill. Cindy Leone, an attorney from Charlotte who practices family law, spoke in opposition to the bill. Rik Lovett, an attorney who practices domestic law, spoke in opposition to the bill. Ed Parker, an attorney from Winston-Salem, spoke in opposition to the bill. Kimberly Bryan, an attorney from Raleigh, spoke in support of the bill.

Committee counsel, Steve Rose, was recognized to address the questions that were raised by the Committee members. The questions raised pertained to the statistics available in terms of how many of these cases have been filed. Mr. Rose reported that the Administrative Office of the Courts had just recently begun to keep track of these cases as a separate tort. They only had a month of statistical data, which showed an average of ten of these cases being filed per month or 120 per year statewide. There is no data to determine whether this tort is specifically attached to a divorce action. There is no data to determine how many are filed by gender.

Rep. Michaux was recognized to speak on the bill. He read a letter from a member of the Court of Appeals who supported the bill and who thanked Rep. Michaux for sponsoring the bill. Rep. Michaux moved for a favorable report of the bill. The vote was six in favor of the bill and four in opposition to the bill. The Committee gave the bill a favorable report.

The next order of business before the Committee was **House Bill 286 (Short title: Adoption Records and Registry).** The Chairman advised that the Committee would not vote on the bill on today, but would listen to comments from those who desired to speak on the bill. Rep. Sherrill made a motion to bring HB 286 before the committee. Committee Counsel, Robin Johnson, gave an explanation of the bill. Louise Greeves of Greensboro and Pat Wheeler of the Legislative Research Study Commission on the Adoption Registry spoke in support of the bill. Jan Reist, a parent from Chapel Hill, spoke in opposition to the bill. The Chairman advised that the Committee would continue discussion of the bill at the next meeting.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Crawford
Rep. Hensley	Rep. Jarrell	Rep. Kiser
Rep. Russell	Rep. Sherrill	

Respectfully submitted,

Blinda Edwards

Blinda Edwards
Committee Assistant

Jerry Braswell

Rep. Jerry Braswell, Chairman

April 16, 1999

ROLL CALL VOTE

6 YES 4 NO = 10 (TOTAL)

HB# 493
SB# ____

HOUSE STANDING COMMITTEE ON JUDICIARY II

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	BRASWELL, CHAIR	___	___	
✓	___	MICHAUX, V. CHAIR	___	___	
✓	___	BAREFOOT	___	___	
___	✓	CANSLER	___	___	
___	✓	CAPPS	___	___	
✓	___	CRAWFORD	___	___	
___	___	DEDMON (MAJORITY WHIP)	___	___	
✓	___	HENSLEY	___	___	
✓	___	JARRELL	___	___	
✓	___	KISER	___	___	
___	✓	RUSSELL	___	___	
___	✓	SHERRILL	___	___	

Ex officio Members

___	___	Speaker Pro Tem, HACKNEY
___	___	Majority Leader, BADDOUR
___	___	Majority Whip, EARLE
___	___	REP. CUNNINGHAM

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 493 A BILL TO BE ENTITLED AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 493

Short Title: Abolish Alien. Affect./Crim. Conv. (Public)

Sponsors: Representatives Fitch, Michaux (Primary Sponsors); Hunter, McAllister, and Nesbitt.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

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HOUSE BILL 493:
Abolish Actions for Alienation of Affection and Criminal Conversation

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Rep. Fitch & Michaux
Date:	March 30, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 493 abolishes the common law causes of action for alienation of affection and criminal conversation.

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2. The loss of affection or consortium must occur.

3. The defendants must have acted wrongfully or willfully.

4. There must be a causal connection between the loss of affection or consortium and the defendant's conduct.

Section 2 enacts G.S. 52-14 which abolishes the common law cause of action for criminal conversation. The elements of the tort of criminal conversation are:

1. The plaintiff must have been married to the person with whom the defendant had intercourse.

2. The sexual intercourse of the defendant with the plaintiff's spouse occurred during the marriage.

The act is effective when it becomes law and does not affect cases pending when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 286

Short Title: Adoption Records and Registry. (Public)

Sponsors: Representatives Earle; Braswell, Luebke, and Wainwright.

Referred to: Judiciary II, if favorable, Finance, if favorable, Appropriations.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADOPTION LAWS PERTAINING TO ACCESS TO ADOPTION RECORDS AND TO ESTABLISH AN ADOPTION REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11.

"Adoption Registry.

"**§ 48-11-101. Definitions.**

In this Article, the following definitions apply:

(1) 'Biological father' means any of the following:

a. A person presumed by law to be the biological father of the adoptee.

b. A person who has established paternity by affidavit under G.S. 130A-101(f) or judicially.

c. A person who has legitimated the adoptee under G.S. 49-10 or under a similar law of another state, or by marriage to the biological mother of the adoptee.

d. A person who has provided substantial financial support or consistent care with respect to the adoptee and biological mother prior to the adoption.

(2) 'Biological relative' means the adoptee's biological mother, biological father, or biological sibling.

(3) 'Biological sibling' includes a half-sibling related to the adoptee through the biological mother or through the biological father only as defined in subdivision (1) of this section.

"§ 48-11-102. Department to establish and maintain mutual consent, voluntary adoption registry.

The Department shall establish and maintain a statewide, confidential, mutual consent, voluntary adoption registry for receiving, filing, and retaining documents that request, authorize, or deny authorization of the release of identifying information. The purpose of the registry is to facilitate voluntary contact between adoptees and their biological relatives when both the adoptee and the biological relative consent to that contact.

"§ 48-11-103. Authorized users of the registry.

(a) Use of the registry is limited to adoptees and their biological relatives.

(b) No adoptee or biological relative shall be permitted to file a consent form with the registry until that person has reached the age of 18 years.

"§ 48-11-104. Information to be collected in the registry.

(a) A person eligible to use the registry may consent to the disclosure of identifying information about the person or request the disclosure of identifying information about an adoptee or a biological relative by filing with the Department a consent form that sets forth all of the following information to the extent known by the person submitting the form:

(1) The current name, address, and telephone number of the person submitting the form.

(2) Any prior names used by that person.

(3) The original and adopted name of the adoptee.

(4) The place of birth, date of birth, and sex of the adoptee.

(5) The name and address of the agency that placed the adoptee or prepared the report to the court.

(6) The persons to whom identifying information about the person submitting the consent form may be disclosed.

(7) If submitted by a biological relative, the relationship of that relative to the adoptee.

(b) The person submitting the consent form shall notify the registry of any change in that person's name, address, or telephone number that occurs after the person files the consent form.

(c) An adoptee or a biological relative may submit a denial of consent form with the registry.

(d) Either consent or denial of consent may be revoked at any time by a person who submitted the consent form or the denial of consent form by submitting a revocation form to the registry.

(e) The registry shall obtain only information necessary for identifying registrants. In no event shall the registry obtain or release information of any kind pertaining to the adoptive parents of or adoptive siblings to the adoptee.

"§ 48-11-105. Requirements for forms submitted to the registry.

(a) Each of the following requirements applies to any consent, denial of consent, or revocation form filed with the registry:

(1) It shall be notarized.

(2) It is effective as of the time it is filed with the registry.

(3) It may be revoked at any time by the person who submitted it.

(b) No consent, denial of consent, or revocation form shall be accepted by the registry until the person submitting it presents satisfactory proof of the person's identity in accordance with rules adopted by the Social Services Commission.

"§ 48-11-106. Disclosure of information contained in the registry.

(a) The Department shall process each consent form filed with the registry in an attempt to match the adoptee with a biological relative. There is a match when an adoptee and a biological relative have both filed consent forms with the registry designating the other as a person to whom identifying information may be disclosed. No identifying information about an adoptee may be disclosed to a biological relative unless that relative has been designated to receive identifying information by the adoptee on the adoptee's consent form.

(b) No identifying information shall be disclosed under this section until the Department determines there is a match. If the Department determines there is a match, then the Department shall, within one month of the filing of the latter of the corresponding consent forms, send a copy of the corresponding consent forms to the agency that placed the adoptee or prepared the report to the court. The agency shall then notify the persons who submitted the consent forms of the match and disclose to them the identifying information contained in the consent forms.

(c) If the agency that placed the adoptee or prepared the report to the court is no longer in existence at the time the Department determines there is a match, then any notification or disclosure required by this section shall be made by an employee or agent of the Department.

(d) All communications with adoptees and biological relatives required by this section shall be made by a social worker who has expertise in post-adoption services. These communications are confidential.

(e) If the Department has information that the person about whom identifying information is requested is deceased, the fact of the person's death shall be disclosed to the requesting person. No identifying information about the deceased person shall be disclosed, except pursuant to G.S. 48-9-104, unless the registry has on file an unrevoked consent form filed by the deceased person authorizing the disclosure of identifying information to the requesting person.

"§ 48-11-107. Recommendation of counseling.

The Department shall recommend to a person submitting any form to the registry that the person obtain counseling, voluntarily, at that person's own expense, from a licensed counselor.

"§ 48-11-108. Fees for using the registry.

The Department shall charge a fee of fifty dollars ($50.00) for filing a consent form or a denial of consent form with the registry at the time of filing. The fee shall be applied to the maintenance of the registry. Any fee authorized by this section may

be waived for any person who provides an affidavit of financial inability to pay the fee.

"**§ 48-11-109. Adoption of rules for the registry.**

The Social Services Commission shall adopt rules for use of and access to the registry in accordance with the requirements of this Article.

"**§ 48-11-110. Department to publicize the registry.**

The Department shall announce and publicize to the general public the existence of the registry and the procedure for the consensual release of identifying information.

"**§ 48-11-111. Department to provide necessary forms and cooperate with registries in other states.**

The Department shall develop and furnish any forms necessary to carry out the provisions of this Article. The Department shall cooperate with registries in other states to facilitate the matching of documents filed pursuant to this Article by individuals in different states.

"**§ 48-11-112. Violation and penalty.**

It is unlawful for a person having custody of or access to documents filed under this Article to disseminate or permit dissemination of information contained in them except as authorized by this Article. Any person who willfully violates the provisions of this section is guilty of a Class I felony."

Section 2. G.S. 48-10-105 reads as rewritten:

"**§ 48-10-105. Unauthorized disclosure of information.**

(a) Except as authorized in G.S. 48-3-205 or in Article 9 or Article 11 of this Chapter, no identifying or nonidentifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, an agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

(b) ~~A~~ Except as provided in G.S. 48-11-112, a person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

(c) The district court may enjoin from further violations any person who makes an unauthorized disclosure.

(d) Notwithstanding the penalties provided in subsection (b) of this section, an individual who is the subject of any of this information may bring a civil action for equitable or monetary relief or both against any person or entity who makes an unauthorized disclosure of the information."

Section 3. There is appropriated from the General Fund to the Department of Health and Human Services the sum of one hundred sixty-seven thousand dollars ($167,000) for the 1999-2000 fiscal year and the sum of one hundred sixty thousand dollars ($160,000) for the 2000-2001 fiscal year to establish and maintain the registry created in Article 11 of Chapter 48 of the General Statutes as enacted in Section 1 of this act.

Section 4. Section 3 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000. G.S. 48-11-112 as enacted

in Section 1 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 286:
Adoption Records and Registry

BILL ANALYSIS

Committee: House Judiciary II
Date: March 15, 1999
Version: 1st Edition

Introduced by: Representative Earle
Summary by: Robin S. Johnson
Committee Counsel

SUMMARY: House Bill 286 would establish a statewide, confidential, mutual consent, voluntary adoption registry. The Department of Health and Human Services (DHHS) would establish and maintain the registry. An adult adoptee or an adult biological relative of an adoptee who requests disclosure of identifying information concerning the other would receive this information if the other has filed a form consenting to this disclosure.

CURRENT LAW: Generally, information connected to an adoption, including information about the parties to the adoption, is confidential. An adult adoptee may obtain certain non-identifying information about the adoptee's biological family if that information has been submitted to a court, an agency, or the Division of Social Services (DSS). An adult adoptee may also obtain certain identifying information about his or her biological relatives upon petition of the court. The information must be necessary for the protection of the adoptee or the public, and the court must find that disclosure is in the best interest of the adoptee, after weighing the interests of the adoptee's biological and adoptive family members.

BACKGROUND: A bill similar to House Bill 286 was introduced during the 1997 Session. The Legislative Research Commission authorized a study of the issue. At that time, 47 states had adoption registries. The LRC committee recommended that North Carolina also establish a registry.

BILL ANALYSIS: This bill would establish the adoption registry to be maintained by DHHS. Adult adoptees and biological relatives of adoptees could choose to submit notarized forms indicating their authorization for the release of confidential information about themselves to adoptees or relatives matching them. These individuals may also file a form that denies consent for disclosure of information. The authorization or denial of consent is effective when it is filed with the registry and may be revoked at any time. To the extent known, each person who submits an authorization may provide his or her name and other identifying information, the name and address of the agency that placed the adoptee, and the adoptee's original name, adoptive name, place of birth, date of birth, and sex. The person submitting the authorization may identify the people to whom the information is to be released.

When DHHS finds a match between biological relatives and adoptees authorizing disclosure of information to the other, DHHS will notify the agency that originally arranged the adoption, and that agency is to notify the individuals. If the agency is no longer in existence, then DHHS will make the notification. All communication with adoptees and biological relatives is confidential and must be made by an experienced social worker who has expertise in post-adoption services. No information concerning the adoptees's adoptive parents or siblings may be released. If the person about whom information is requested is deceased, then the fact of the person's death must be disclosed. Identifying information about the deceased person may not be disclosed unless the person filed an authorization prior to death or unless a court orders disclosure of the information. Unauthorized dissemination of information from the registry is a Class I felony.

In order to maintain the registry, DHHS would charge a $50 fee for filing an authorization or a denial of consent with the registry. The fee may be waived for any person who files an affidavit of financial inability to pay the fee. DHHS would also be required to publicize the registry and its procedures, and to develop necessary forms. DHHS would also be directed to cooperate with other states that operate registries in order to facilitate the matching of individuals. The Social Services Commission would adopt rules for operating the registry.. Finally, the bill would appropriate $167,000 for 1999-2000 and $160,000 for 2000-2001 from the General Fund to DHHS to establish and maintain registry.

EFFECTIVE DATES: The bill would take effect January 1, 2000. The provision that makes unauthorized disclosure of information a Class I felony would apply to offenses on or after that date. The provision that authorizes the appropriations would become effective July 1, 1999.

H286-SMRH-001

VISITOR REGISTRATION SHEET

JUDICIARY II - April 6, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Brooks	NCFPC
Ed Parker	Attorney from W/S, N.C.
Cindy Leone	Attorney from Charlotte
Gwen Norton	DHHS / Adoptions
Frances Pollock	DHHS / DSS / Adoptions
Laura Hartsell	NC Bar Association
Linda Kaye Teal	Attorney at Law, Cary, NC
Charlon Rackley	176 Barrington Dr, Statesville 28677
Louise Greaves	CHS 604 Meadowlark Dr Greensboro, N.C. 27415
Edith Votta	Children's Home Society of N.C., P.O. Box 14608 Greensboro 27415
MRS. PATRICIA Y. WHEELER	SENATE CO-CHAIR, L.R.C. Adoption Registry
Kimberly Bryan	Attorney
Jonathan McGirt	NC Bar Association
Bill Scoggin	NC BAR ASSOC.
Charles Cramer	NCATL
Patricia Smith	Freedom Newspapers
Scott Hannah	NCATL
Rik Lovett	Rik Lovett and Assoc's.
Kim M. Olsen	Fayetteville Observer
Paul Rose	parent
John Rust	parent
Shawna Ransome	DSS
Bernard Allen	SOS

AGENDA

HOUSE COMMITTEE ON JUDICIARY II

April 8, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 286

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, APRIL 8, 1999

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the Committee were Elesha Speight and Afton Mosley.

The business before the Committee on today was the continuation of discussion for **HB 286 (Short title: Adoption Records and Registry).**

Rep. Earle was recognized to give an explanation of the bill. There were two amendments to the bill and Rep. Michaux was recognized to explain the first amendment. (Refer to Exhibit I, which is incorporated herein and made a part of these minutes). Rep. Michaux made a motion to adopt the amendment. The committee approved the motion. Rep. Michaux was recognized to explain Amendment II. (Refer to Exhibit II, which is incorporated herein and made a part of these minutes). Rep. Michaux made a motion for the adoption of the second amendment. The committee approved the motion.

Meredith Mills and Tom Butler, two adoptees, spoke in support of the bill. John Rustin of the North Carolina Family Policy Council spoke in opposition to the bill.

Rep. Cunningham made a motion for a favorable report of the bill. Rep. Michaux made a substitute motion that the amendments adopted be rolled into a committee substitute, and that the committee substitute be given a favorable report, and an unfavorable report be given to the original bill. The Committee approved the motion along with the recommendation that the bill be re-referred to the Committee on Finance and the Committee on Appropriations.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot	Rep. Cansler
Rep. Crawford	Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill			

Respectfully Submitted,

Blinda Edwards

Blinda Edwards
Committee Assistant

Jerry Braswell

Rep. Jerry Braswell, Chairman

4-8-99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 286 A BILL TO BE ENTITLED AN ACT TO AMEND THE ADOPTION LAWS PERTAINING TO ACCESS TO ADOPTION RECORDS AND TO ESTABLISH AN ADOPTION REGISTRY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 286

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H286-ARL-001

Date _____ ,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative

1 moves to amend the bill on page 1, lines 19 through 21,
2 by deleting those lines.
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 286

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

H286-ARL-002

Date ,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 2, lines 36 through 40, by rewriting those lines to read:
"(c) Consent may be revoked at any time by a person who submitted the consent form by submitting a revocation form to the registry."; and

on page 2, line 41, by deleting "(e)" and substituting "(d)"; and

on page 3, line 1, by deleting the phrase ", denial of consent,"; and

on page 3, line 6, by deleting the phrase ", denial of consent,"; and

on page 3, lines 43, by deleting the phrase "or a denial of consent form".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 286

Short Title: Adoption Records and Registry. (Public)

Sponsors: Representatives Earle; Braswell, Luebke, and Wainwright.

Referred to: Judiciary II, if favorable, Finance, if favorable, Appropriations.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADOPTION LAWS PERTAINING TO ACCESS TO ADOPTION RECORDS AND TO ESTABLISH AN ADOPTION REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11.

"Adoption Registry.

"**§ 48-11-101. Definitions.**

In this Article, the following definitions apply:

(1) 'Biological father' means any of the following:

a. A person presumed by law to be the biological father of the adoptee.

b. A person who has established paternity by affidavit under G.S. 130A-101(f) or judicially.

c. A person who has legitimated the adoptee under G.S. 49-10 or under a similar law of another state, or by marriage to the biological mother of the adoptee.

d. A person who has provided substantial financial support or consistent care with respect to the adoptee and biological mother prior to the adoption.

(2) 'Biological relative' means the adoptee's biological mother, biological father, or biological sibling.

(3) 'Biological sibling' includes a half-sibling related to the adoptee through the biological mother or through the biological father only as defined in subdivision (1) of this section.

"§ 48-11-102. Department to establish and maintain mutual consent, voluntary adoption registry.

The Department shall establish and maintain a statewide, confidential, mutual consent, voluntary adoption registry for receiving, filing, and retaining documents that request, authorize, or deny authorization of the release of identifying information. The purpose of the registry is to facilitate voluntary contact between adoptees and their biological relatives when both the adoptee and the biological relative consent to that contact.

"§ 48-11-103. Authorized users of the registry.

(a) Use of the registry is limited to adoptees and their biological relatives.

(b) No adoptee or biological relative shall be permitted to file a consent form with the registry until that person has reached the age of 18 years.

"§ 48-11-104. Information to be collected in the registry.

(a) A person eligible to use the registry may consent to the disclosure of identifying information about the person or request the disclosure of identifying information about an adoptee or a biological relative by filing with the Department a consent form that sets forth all of the following information to the extent known by the person submitting the form:

(1) The current name, address, and telephone number of the person submitting the form.

(2) Any prior names used by that person.

(3) The original and adopted name of the adoptee.

(4) The place of birth, date of birth, and sex of the adoptee.

(5) The name and address of the agency that placed the adoptee or prepared the report to the court.

(6) The persons to whom identifying information about the person submitting the consent form may be disclosed.

(7) If submitted by a biological relative, the relationship of that relative to the adoptee.

(b) The person submitting the consent form shall notify the registry of any change in that person's name, address, or telephone number that occurs after the person files the consent form.

(c) An adoptee or a biological relative may submit a denial of consent form with the registry.

(d) Either consent or denial of consent may be revoked at any time by a person who submitted the consent form or the denial of consent form by submitting a revocation form to the registry.

(e) The registry shall obtain only information necessary for identifying registrants. In no event shall the registry obtain or release information of any kind pertaining to the adoptive parents of or adoptive siblings to the adoptee.

"§ 48-11-105. Requirements for forms submitted to the registry.

(a) Each of the following requirements applies to any consent, denial of consent, or revocation form filed with the registry:

(1) It shall be notarized.

(2) It is effective as of the time it is filed with the registry.

(3) It may be revoked at any time by the person who submitted it.

(b) No consent, denial of consent, or revocation form shall be accepted by the registry until the person submitting it presents satisfactory proof of the person's identity in accordance with rules adopted by the Social Services Commission.

"**§ 48-11-106. Disclosure of information contained in the registry.**

(a) The Department shall process each consent form filed with the registry in an attempt to match the adoptee with a biological relative. There is a match when an adoptee and a biological relative have both filed consent forms with the registry designating the other as a person to whom identifying information may be disclosed. No identifying information about an adoptee may be disclosed to a biological relative unless that relative has been designated to receive identifying information by the adoptee on the adoptee's consent form.

(b) No identifying information shall be disclosed under this section until the Department determines there is a match. If the Department determines there is a match, then the Department shall, within one month of the filing of the latter of the corresponding consent forms, send a copy of the corresponding consent forms to the agency that placed the adoptee or prepared the report to the court. The agency shall then notify the persons who submitted the consent forms of the match and disclose to them the identifying information contained in the consent forms.

(c) If the agency that placed the adoptee or prepared the report to the court is no longer in existence at the time the Department determines there is a match, then any notification or disclosure required by this section shall be made by an employee or agent of the Department.

(d) All communications with adoptees and biological relatives required by this section shall be made by a social worker who has expertise in post-adoption services. These communications are confidential.

(e) If the Department has information that the person about whom identifying information is requested is deceased, the fact of the person's death shall be disclosed to the requesting person. No identifying information about the deceased person shall be disclosed, except pursuant to G.S. 48-9-104, unless the registry has on file an unrevoked consent form filed by the deceased person authorizing the disclosure of identifying information to the requesting person.

"**§ 48-11-107. Recommendation of counseling.**

The Department shall recommend to a person submitting any form to the registry that the person obtain counseling, voluntarily, at that person's own expense, from a licensed counselor.

"**§ 48-11-108. Fees for using the registry.**

The Department shall charge a fee of fifty dollars ($50.00) for filing a consent form or a denial of consent form with the registry at the time of filing. The fee shall be applied to the maintenance of the registry. Any fee authorized by this section may

be waived for any person who provides an affidavit of financial inability to pay the fee.

"**§ 48-11-109. Adoption of rules for the registry.**

The Social Services Commission shall adopt rules for use of and access to the registry in accordance with the requirements of this Article.

"**§ 48-11-110. Department to publicize the registry.**

The Department shall announce and publicize to the general public the existence of the registry and the procedure for the consensual release of identifying information.

"**§ 48-11-111. Department to provide necessary forms and cooperate with registries in other states.**

The Department shall develop and furnish any forms necessary to carry out the provisions of this Article. The Department shall cooperate with registries in other states to facilitate the matching of documents filed pursuant to this Article by individuals in different states.

"**§ 48-11-112. Violation and penalty.**

It is unlawful for a person having custody of or access to documents filed under this Article to disseminate or permit dissemination of information contained in them except as authorized by this Article. Any person who willfully violates the provisions of this section is guilty of a Class I felony."

Section 2. G.S. 48-10-105 reads as rewritten:

"**§ 48-10-105. Unauthorized disclosure of information.**

(a) Except as authorized in G.S. 48-3-205 or in Article 9 or Article 11 of this Chapter, no identifying or nonidentifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, an agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

(b) ~~A~~ Except as provided in G.S. 48-11-112, a person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

(c) The district court may enjoin from further violations any person who makes an unauthorized disclosure.

(d) Notwithstanding the penalties provided in subsection (b) of this section, an individual who is the subject of any of this information may bring a civil action for equitable or monetary relief or both against any person or entity who makes an unauthorized disclosure of the information."

Section 3. There is appropriated from the General Fund to the Department of Health and Human Services the sum of one hundred sixty-seven thousand dollars ($167,000) for the 1999-2000 fiscal year and the sum of one hundred sixty thousand dollars ($160,000) for the 2000-2001 fiscal year to establish and maintain the registry created in Article 11 of Chapter 48 of the General Statutes as enacted in Section 1 of this act.

Section 4. Section 3 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000. G.S. 48-11-112 as enacted

in Section 1 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 286
Proposed Committee Substitute H286-PCS3295-RH

Short Title: Adoption Records and Registry. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADOPTION LAWS PERTAINING TO ACCESS TO ADOPTION RECORDS AND TO ESTABLISH AN ADOPTION REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 48 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11.

"Adoption Registry.

"**§ 48-11-101. Definitions.**

In this Article, the following definitions apply:

(1) 'Biological father' means any of the following:

a. A person presumed by law to be the biological father of the adoptee.

b. A person who has established paternity by affidavit under G.S. 130A-101(f) or judicially.

c. A person who has legitimated the adoptee under G.S. 49-10 or under a similar law of another state, or by marriage to the biological mother of the adoptee.

(2) 'Biological relative' means the adoptee's biological mother, biological father, or biological sibling.

(3) 'Biological sibling' includes a half-sibling related to the adoptee through the biological mother or through the biological father only as defined in subdivision (1) of this section.

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The Department shall establish and maintain a statewide, confidential, mutual consent, voluntary adoption registry for receiving, filing, and retaining documents that request, authorize, or deny authorization of the release of identifying information. The purpose of the registry is to facilitate voluntary contact between adoptees and their biological relatives when both the adoptee and the biological relative consent to that contact.

"§ 48-11-103. Authorized users of the registry.

(a) Use of the registry is limited to adoptees and their biological relatives.

(b) No adoptee or biological relative shall be permitted to file a consent form with the registry until that person has reached the age of 18 years.

"§ 48-11-104. Information to be collected in the registry.

(a) A person eligible to use the registry may consent to the disclosure of identifying information about the person or request the disclosure of identifying information about an adoptee or a biological relative by filing with the Department a consent form that sets forth all of the following information to the extent known by the person submitting the form:

(1) The current name, address, and telephone number of the person submitting the form.

(2) Any prior names used by that person.

(3) The original and adopted name of the adoptee.

(4) The place of birth, date of birth, and sex of the adoptee.

(5) The name and address of the agency that placed the adoptee or prepared the report to the court.

(6) The persons to whom identifying information about the person submitting the consent form may be disclosed.

(7) If submitted by a biological relative, the relationship of that relative to the adoptee.

(b) The person submitting the consent form shall notify the registry of any change in that person's name, address, or telephone number that occurs after the person files the consent form.

(c) Consent may be revoked at any time by a person who submitted the consent form by submitting a revocation form to the registry.

(d) The registry shall obtain only information necessary for identifying registrants. In no event shall the registry obtain or release information of any kind pertaining to the adoptive parents of or adoptive siblings to the adoptee.

"§ 48-11-105. Requirements for forms submitted to the registry.

(a) Each of the following requirements applies to any consent or revocation form filed with the registry:

(1) It shall be notarized.

(2) It is effective as of the time it is filed with the registry.

(3) It may be revoked at any time by the person who submitted it.

(b) No consent or revocation form shall be accepted by the registry until the person submitting it presents satisfactory proof of the person's identity in accordance with rules adopted by the Social Services Commission.

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(c) If the agency that placed the adoptee or prepared the report to the court is no longer in existence at the time the Department determines there is a match, then any notification or disclosure required by this section shall be made by an employee or agent of the Department.

(d) All communications with adoptees and biological relatives required by this section shall be made by a social worker who has expertise in post-adoption services. These communications are confidential.

(e) If the Department has information that the person about whom identifying information is requested is deceased, the fact of the person's death shall be disclosed to the requesting person. No identifying information about the deceased person shall be disclosed, except pursuant to G.S. 48-9-104, unless the registry has on file an unrevoked consent form filed by the deceased person authorizing the disclosure of identifying information to the requesting person.

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The Social Services Commission shall adopt rules for use of and access to the registry in accordance with the requirements of this Article.

"**§ 48-11-110. Department to publicize the registry.**

The Department shall announce and publicize to the general public the existence of the registry and the procedure for the consensual release of identifying information.

"**§ 48-11-111. Department to provide necessary forms and cooperate with registries in other states.**

The Department shall develop and furnish any forms necessary to carry out the provisions of this Article. The Department shall cooperate with registries in other states to facilitate the matching of documents filed pursuant to this Article by individuals in different states.

"**§ 48-11-112. Violation and penalty.**

It is unlawful for a person having custody of or access to documents filed under this Article to disseminate or permit dissemination of information contained in them except as authorized by this Article. Any person who willfully violates the provisions of this section is guilty of a Class I felony."

Section 2. G.S. 48-10-105 reads as rewritten:

"**§ 48-10-105. Unauthorized disclosure of information.**

(a) Except as authorized in G.S. 48-3-205 or in Article 9 or Article 11 of this Chapter, no identifying or nonidentifying information contained in a report or records described therein may be disclosed by present or former employees or officials of the court, an agency, the State, a county, an attorney or other provider of professional services, or any person or entity who wrongfully obtains such a report or records.

(b) ~~A~~ Except as provided in G.S. 48-11-112, a person who knowingly makes an unauthorized disclosure of identifying information is guilty of a Class 1 misdemeanor.

(c) The district court may enjoin from further violations any person who makes an unauthorized disclosure.

(d) Notwithstanding the penalties provided in subsection (b) of this section, an individual who is the subject of any of this information may bring a civil action for equitable or monetary relief or both against any person or entity who makes an unauthorized disclosure of the information."

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Section 4. Section 3 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000. G.S. 48-11-112 as enacted in Section 1 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 286:
Adoption Records and Registry

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Earle
Date:	March 15, 1999	**Summary by:**	Robin S. Johnson
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 286 would establish a statewide, confidential, mutual consent, voluntary adoption registry. The Department of Health and Human Services (DHHS) would establish and maintain the registry. An adult adoptee or an adult biological relative of an adoptee who requests disclosure of identifying information concerning the other would receive this information if the other has filed a form consenting to this disclosure.***

CURRENT LAW: Generally, information connected to an adoption, including information about the parties to the adoption, is confidential. An adult adoptee may obtain certain non-identifying information about the adoptee's biological family if that information has been submitted to a court, an agency, or the Division of Social Services (DSS). An adult adoptee may also obtain certain identifying information about his or her biological relatives upon petition of the court. The information must be necessary for the protection of the adoptee or the public, and the court must find that disclosure is in the best interest of the adoptee, after weighing the interests of the adoptee's biological and adoptive family members.

BACKGROUND: A bill similar to House Bill 286 was introduced during the 1997 Session. The Legislative Research Commission authorized a study of the issue. At that time, 47 states had adoption registries. The LRC committee recommended that North Carolina also establish a registry.

BILL ANALYSIS: This bill would establish the adoption registry to be maintained by DHHS. Adult adoptees and biological relatives of adoptees could choose to submit notarized forms indicating their authorization for the release of confidential information about themselves to adoptees or relatives matching them. These individuals may also file a form that denies consent for disclosure of information. The authorization or denial of consent is effective when it is filed with the registry and may be revoked at any time. To the extent known, each person who submits an authorization may provide his or her name and other identifying information, the name and address of the agency that placed the adoptee, and the adoptee's original name, adoptive name, place of birth, date of birth, and sex. The person submitting the authorization may identify the people to whom the information is to be released.

When DHHS finds a match between biological relatives and adoptees authorizing disclosure of information to the other, DHHS will notify the agency that originally arranged the adoption, and that agency is to notify the individuals. If the agency is no longer in existence, then DHHS will make the notification. All communication with adoptees and biological relatives is confidential and must be made by an experienced social worker who has expertise in post-adoption services. No information concerning the adoptees's adoptive parents or siblings may be released. If the person about whom information is requested is deceased, then the fact of the person's death must be disclosed. Identifying information about the deceased person may not be disclosed unless the person filed an authorization prior to death or unless a court orders disclosure of the information. Unauthorized dissemination of information from the registry is a Class I felony.

In order to maintain the registry, DHHS would charge a $50 fee for filing an authorization or a denial of consent with the registry. The fee may be waived for any person who files an affidavit of financial inability to pay the fee. DHHS would also be required to publicize the registry and its procedures, and to develop necessary forms. DHHS would also be directed to cooperate with other states that operate registries in order to facilitate the matching of individuals. The Social Services Commission would adopt rules for operating the registry.. Finally, the bill would appropriate $167,000 for 1999-2000 and $160,000 for 2000-2001 from the General Fund to DHHS to establish and maintain registry.

EFFECTIVE DATES: The bill would take effect January 1, 2000. The provision that makes unauthorized disclosure of information a Class I felony would apply to offenses on or after that date. The provision that authorizes the appropriations would become effective July 1, 1999.

H286-SMRH-001

House Bill 286
April 6, 1999
Jan Reist

House Bill 286, Adoption Registry, is yet another version of proposed legislation brought to the North Carolina Legislature regularly for close to 20 years by advocates for open adoption records. This group, representing less than 5% of those for whom it claims to speak[1], has regularly prevailed upon various legislators to sponsor these bills. Fortunately such legislation has been consistently defeated by the conscience and good sense of legislators once they have been made aware of the other side, the other 95% - adoptees who are quietly and unquestioningly part of their families, and would have a fundamental right undermined if such legislation were to be enacted, the right for every child to have complete security in his or her family. It would also be a breach of promise to birthparents who were promised their privacy and have moved on to other lives.

House Bill 286 appears to be less aggressive than some of its predecessors and yet it too has the potential for destroying adoption as we know it by giving credibility to another family. The North Carolina Law, in its Chapter on adoption, emphatically emphasizes the totality of adoption. This is stated in the introductory Legislative Intent

"...and to protect the (adoptees) from interference long after they have become properly adjusted in their adoptive home by biological parents..."

to case after case which used language such as:

"complete substitution of families"

"(an adoptee) becomes a complete stranger to the bloodline of his natural parents"

"the right of a natural mother after she has permitted the child's adoption by others is no greater than a stranger to a child,"

and so forth.

It is with this understanding that birth mothers gave up their children for adoption and families made the children their own.

This is the way it needs to be for the emotional security and stability of all involved. A child becomes just as much a part of his new family as any birth child, and the birth parents get on with their lives without fearing the adoption will come back to haunt them.

What chance does the institution of adoption in America have when birth mothers are not allowed to "put it behind them", children are told that there is another family somewhere, and adoptive parents are little more than temporary foster care providers. It would seem abortions are the only answer for women with untimely pregnancies, and

[1] - The National Council for Adoption, Washington, D.C give the percentage of adoptees wanting to find their birth parent(s) or vice versa as something less than 5%.

OVER

adopting abroad the only sensible answer for couples wanting a child who would truly be their own and free from threats of interference.

A child cannot be totally secure in one family if a second is given credibility. He/she cannot feel complete security if a second is lurking in the background. It may seem harmless if there is a registry where each side, the adoptee and birth parent, must have filed to have access to the other. But as proposed in this bill, there are mechanics for pressure being brought to bear, including unwritten psychological pressure on an adoptee or birth parent who, not wanting to disrupt their lives, still are made to wonder if there is someone out there waiting for them. The media makes such issues very poignant and compelling.

Consider the emotional trip laid on a child seeing a drama of a birth mother dying of cancer vainly checking the registry sources week after week and wondering if he or she should do something. I know our daughter would! I can hear her saying "Mommie, that's so sad – do you think there is someone out there waiting for me? Do you think I should do something?"

In addition to giving credibility to another family, and the psychological baggage that comes with an adoption registry and its attendant advertisements, there are other dangers:

A passive registry has been used by many states as but a stepping stone to more open records, and all indications are that from statement after statement this is the intent of those pushing for this legislation.

There are loopholes for misuse, misinterpretation, and abuse, and this bill has a dangerous provision for a person to file a "denial of consent form" which in itself is intrusive. Is filing this necessary for one's anonymity? And as such, doesn't it destroy that very anonymity.

It is argued that most states have this legislation, so why not North Carolina? According, again, to the National Council for Adoption, States with this legislation are experiencing the problems I mentioned above and are rethinking the whole issue.

Now more than ever with families in chaos and unsettling issues such as abortion, test tube babies and surrogate parents facing us, adoption needs to have its intended absoluteness and should not be undermined. To do so undermines the security and stability of adopted children and their families and makes abortion the only logical solution for an unwanted pregnancy.

The Children's Home Society of NC
Survey – Access to Adoption Information

Approximately 6,000 surveys were mailed to 900 adoptees, 100 birth parents, and 5,000 adoptive parents.

2,263 surveys were returned. Of those who responded, 1,782 were adoptive parents, 66 were birth parents, and 392 were adoptees.

. . . Results . . .

1. Do you feel that members of the adoption triad should ever be allowed access to identifying information from adoption records?

Yes	**1,628**	**72%**
No	**490**	**22%**
No answer	**145**	**6%**

2. Should **adoptees** be allowed access to identifying information?

• Age 18 upon request	**279**	**12%**
• Age 18 with birth parent consent only	**233**	**10%**
• Age 21 upon request	**485**	**21%**
• Age 21 with birth parent consent only	**805**	**36%**
• Only in medical emergency with court order	**322**	**14%**
• Never	**113**	**5%**
• No answer	**26**	**1%**

3. Should **birth parents** be allowed access to identifying information?

• When adoptee reaches age 18 upon request	**154**	**7%**
• When adoptee reaches age 18 only with adoptee consent	**272**	**12%**
• When adoptee reaches age 21 upon request	**206**	**9%**
• When adoptee reaches age 21 only with adoptee consent	**983**	**43%**
• Never	**617**	**27%**
• No answer	**31**	**1%**

4. Should **adoptive parents** be allowed access to identifying information?

• When and if they feel a search is in the best interest of their child before the child is of legal age (age 18) upon request	**835**	**37%**
• When and if they feel a search is in the best interest of their child only with birth parent approval	**1,010**	**45%**
• Never	**359**	**16%**
• No answer	**59**	**2%**

5. Do you feel that an agency should be used as an intermediary if access to identifying information were allowed?

Yes	**1,994**	**88%**	
No	**195**	**9%**	
No answer	**74**	**3%**	
Should this be...		mandatory?	**1,171** **52%**
		by choice?	**752** **33%**
		No answer	**340** **15%**

6. Should counseling be required if access to identifying information were allowed?

Yes	**1,548**	**68%**
No	**567**	**25%**
No answer	**148**	**7%**

VISITOR REGISTRATION SHEET

DATE 8 April 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brenda Kinney, Esq	Durham
John Rustin	NCFPC
Heidi Efaw	NCGA, Sen. Ken Moore
Frances Pollock	DHHS/DSS/Adoption
Edith Vatta	Children's Home Soc. of NC
Lisa McLemore	parent - Children's Home Society
Tom L. Butler	Adoptee - Wilmington, NC
LARRY G. POWELL JR	ADOPTEE - CRAMERTON, N.C.
MRS. PATRICIA Y. WHEELER	SENATE CO-CHAIR - LRC "Adoption Registry"
Meredith E. Mills	Adoptee
	AP
Lanesdale	DSS

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

April 13, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 813

STAFF EXPLANATION

HOUSE BILL 814

STAFF EXPLANATION

HOUSE BILL 818

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, APRIL 13, 1999

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the Committee were Adam Miller and Genesis Wallace. The Chair also recognized the Wayne County Chamber of Commerce Junior Leadership Group who was visiting the General Assembly.

The bills on the agenda were HB 813, HB 814, and HB 818, all sponsored by Rep. Hensley.

Rep. Hensley was recognized to explain **HB 818(Short title: Rule 609 Impeachment Evidence)** Refer to Exhibits A through A-3. Staff also gave an explanation of the bill. Rep. Russell made a motion for a favorable report of the bill. The Committee gave the bill a favorable report.

HB 813 (Short title: Prohibit Cyberstalking) was the next bill considered by the Committee. Refer to Exhibits B through B-3. There was a Proposed Committee Substitute (Exhibit B-1) and Rep. Sherrill made a motion to bring the committee substitute before the Committee. Rep. Hensley spoke on the committee substitute. Rep. Michaux sent forth an amendment to the bill (Exhibit B-2). He moved for adoption of the amendment. The amendment was adopted. Rep. Sherrill made a motion for a favorable report of the committee substitute, and an unfavorable report to the original bill and that the committee substitute be re-referred to the Committee on Technology. The motion passed.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Hensley	Rep. Jarrell	Rep. Kiser
Rep. Russell	Rep. Sherrill		

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 818 A BILL TO BE ENTITLED AN ACT AMENDING THE EVIDENCE CODE, CHAPTER 8C OF THE GENERAL STATUTES, TO MAKE ADMISSIBLE FOR THE PURPOSES OF IMPEACHMENT EVIDENCE OF A WITNESS' CONVICTION OF A FELONY OR CLASS A1, CLASS 1, OR CLASS 2 MISDEMEANOR.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

Exhibit A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 818

Short Title: Rule 609 Impeachment Evidence. (Public)

Sponsors: Representatives Hensley; and Blue.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EVIDENCE CODE, CHAPTER 8C OF THE GENERAL STATUTES, TO MAKE ADMISSIBLE FOR THE PURPOSES OF IMPEACHMENT EVIDENCE OF A WITNESS' CONVICTION OF A FELONY OR CLASS A1, CLASS 1, OR CLASS 2 MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8C-1, Rule 609(a) of the Evidence Code, reads as rewritten:

"(a) General rule. -- For the purpose of attacking the credibility of a witness, evidence that ~~he~~ the witness has been convicted of a ~~crime punishable by more than 60 days confinement~~ felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from ~~him~~ the witness or established by public record during cross-examination or thereafter."

Section 2. This act becomes effective December 1, 1999; and, consistent with G.S. 8C-1, Rule 1101(a), shall apply to all actions and proceedings in the courts of this State.

Exhibit A-1

HOUSE BILL 818:
Amend Rule 609; Impeachment Evidence

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: March 12, 1999
Version: 1

Introduced by: Representative Hensley
Summary by: Steven Rose
Committee Counsel

House Bill 818 amends Rule 609(a) of the North Carolina Evidence Code. Currently the Rule provide that the credibility of a witness may be attacked by offering evidence that the witness has been convicted of a crime punishable by more than 60 days confinement. The amendment would allow impeachment evidence if the witness has been convicted of a felony, or a Class A1, Class 1, or Class 2 misdemeanor.

Under the North Carolina Rules of Evidence, the credibility of a witness can be attacked by showing that the witness has been convicted of a crime punishable by more than 60 days confinement. Under the Fair Sentencing Act, which was in force when the Evidence Code was adopted in 1983, previous convictions of offenses punishable by more than 60 days confinement were deemed to be aggravating factors in determining sentences. This was used as the benchmark to determine if a crime was serious enough to warrant its being used to call into question the creditability of a witness.

When Structured Sentencing was adopted, the 60-day standard as an aggravating factor in sentencing was repealed. Felonies, Class A1 and Class 1 misdemeanors are punishable by confinement that may exceed 60 days. Class II felonies may be punished by confinement that may reach 60 day, but not exceed that.

The act becomes effective December 1, 1999 and, as with the other Rules of Evidence, applies to all actions and proceedings in the courts of this State unless a statute specifies otherwise or they are excluded under Rule 1101. Excluded proceedings include preliminary questions of fact, grand jury proceedings, miscellaneous proceedings such as extradition, sentencing, and probation, and certain contempt proceedings.

H818-SMRL-001

Exhibit A-2

Effective for Offenses Committed on or after 12/1/95

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1 (discretionary)	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1 (discretionary)	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2 (max $1,000)	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3 (max $200)	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

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

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

Exhibit A-3

character for truthfulness, since these acts do not involve fraud, trickery, or deceit. State v. Harrison, 90 N.C. App. 629, 369 S.E.2d 624 (1988).

Where the victim testified that defendant stated "they are never going to take me in again alive," the statement was probative of defendant's knowledge of his guilt, and defendant made no showing that the probative value of the statement was substantially outweighed by its prejudicial effect. State v. Charles, 92 N.C. App. 430, 374 S.E.2d 658 (1988), cert. denied, 324 N.C. 338, 378 S.E.2d 800 (1989).

Extrinsic Conduct Evidence Held Inadmissible. — Prosecutor's questions upon cross-examination of defendant, regarding a fight he was involved in at the hospital where his competency evaluation took place, were not addressed to the issue of defendant's credibility and it was error for such extrinsic conduct evidence to be admitted. State v. Harris, 323 N.C. 112, 371 S.E.2d 689 (1988).

Where, in an attempt to undercut defendant's testimony about her abuse by her first husband who was drug addict, and by her second who was an alcoholic, district attorney asked, "Well, you sort of enjoyed smoking marijuana, didn't you?" and defendant responded, "I did on occasion sir," the question was error; defendant's admission to having smoked marijuana had no conceivable tendency to prove or disprove her truthfulness and § 8C-1, Rule 404(b) prohibits evidence of other crimes, wrongs, or acts to prove the defendant acted in conformity with a character trait those acts exhibit. State v. Clark, 324 N.C. 146, 377 S.E.2d 54 (1989).

Refusal to Exclude Evidence of Other Crimes Held Prejudicial. — In trial for murder of defendant's husband, rulings of the trial judge denying defendant's motion in limine to exclude evidence implicating her in other killings held to have impermissibly chilled her right to testify in her own defense. State v. Lamb, 321 N.C. 633, 365 S.E.2d 600 (1988).

Rule 609. Impeachment by evidence of conviction of crime.

(a) *General rule.* — For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime punishable by more than 60 days confinement shall be admitted if elicited from him or established by public record during cross-examination or thereafter.

(b) *Time limit.* — Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) *Effect of pardon.* — Evidence of a conviction is not admissible under this rule if the conviction has been pardoned.

(d) *Juvenile adjudications.* — Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) *Pendency of appeal.* — The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. (1983, c. 701, s. 1.)

4-13

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 813 A BILL TO BE ENTITLED AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

Exhibit B-2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H 813 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 25

( ) WHICH CHANGES THE TITLE

by inserting the word "intentionally" before the word "introduce".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

Exhibit B-1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H813-CSRH-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 813
THIS IS A DRAFT 12-APR-99 20:33:55
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Prohibit Cyberstalking. (Public)

Sponsors:

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 14 is amended by adding a new section to read:

"§ 14-277.5. Cyberstalking.

(a) The following definitions apply in this section:

(1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. -- The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Harass. -- A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes that person and that serves no legitimate purpose.

(4) Provider. -- A provider of electronic mail or electronic communication or the provider's officer, employee, agent, landlord, custodian, or designee.

(5) Virus. -- A program or set of instructions including a virus, Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself and to destroy, damage, or infect software or hardware designed to transmit or receive electronic mail or electronic communication.

(b) It is unlawful for a person to use electronic mail or electronic communication with the intent to harass, threaten, annoy, terrify, defame, or embarrass any person. A first offense under this subsection is a Class 1 misdemeanor; however, a first offense under this subsection is a Class A1 misdemeanor if there is in effect at the time of the offense a temporary restraining order, injunction, or other court order prohibiting the defendant from contact with the victim. A second or subsequent offense under this subsection is a Class A1 misdemeanor.

(c) It is unlawful for a person to use electronic mail or electronic communication to introduce a virus into electronic mail or electronic communication. An offense under this subsection is a Class H felony.

(d) Any offense committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received, or first viewed by any person.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

(f) It is not an offense under this section for a provider to provide information, facilities, or technical assistance to persons authorized by federal or State law to intercept or provide electronic mail or electronic communication or to conduct electronic mail or electronic communication surveillance, if the provider has been provided with a court order signed by the

authorizing judge directing the provision of information, facilities, or technical assistance."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

Exhibit B

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 813

Short Title: Prohibit Cyberstalking. (Public)

Sponsors: Representatives Hensley; Gardner and Goodwin.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 14 is amended by adding a new section to read:

"**§ 14-277.5. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. -- The transmission of information or a communication by the use of the Internet, a computer, facsimile machine, pager, cellular telephone, video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Harass. -- A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person and that serves no legitimate purpose.

(4) Virus. -- A program or set of instructions that can infect other software or hardware by modifying them to include a copy of itself.

(b) It is unlawful for a person to use electronic mail or electronic communication:

(1) With the intent to harass, threaten, annoy, terrify, defame, or embarrass any person; or

(2) To introduce into electronic mail or electronic communication any program or instruction including a virus, Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself, destroy, damage, or infect a unit or system designed to transmit or receive electronic mail or electronic communication.

(c) An offense under subdivision (b) of this section is punishable as follows:

(1) An offense under subdivision (b)(1) of this section is a Class 1 misdemeanor except that:

a. An offense under subdivision (b)(1) is a Class A1 misdemeanor if the offense is a second or subsequent offense under subdivision (b)(1).

b. An offense under this subdivision (b)(1) is a Class A1 misdemeanor if there is in effect at the time of the offense a temporary restraining order, injunction, or other court order prohibiting the defendant from contact with the victim.

(2) An offense under subdivision (b)(2) of this section is a Class H felony.

(d) Any offense committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communications were originally sent, originally received, or first viewed by any person.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

(f) It is not an offense under this section for a provider of electronic mail or electronic communication, its officers, employees and agents, landlords, custodians, or other persons to provide information, facilities, or technical assistance to persons authorized by federal or State law to intercept or provide electronic mail or electronic communications or to conduct electronic mail or electronic communication surveillance, if the provider, its officers, employees or agents, landlord, custodian, or other specified person has been provided with a court order signed by the authorizing judge directing the provision of information, facilities, or technical assistance."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

Exhibit B-3

HOUSE BILL 813:
Prohibit Cyberstalking.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hensley
Date:	April 12, 1999	**Summary by:**	Robin S. Johnson RJ
Version:	First Edition - PCS H813-CSRH-001		Committee Counsel

BILL ANALYSIS: The proposed committee substitute makes only technical changes to the original bill.

The PCS would create a new G.S. 14-277.5 to create two new criminal offenses connected to the use of electronic mail and electronic communication. ***Subsection (b) would make it a Class 1 misdemeanor (for a first offense) to use electronic mail or electronic communication with the intent to harass, threaten, annoy, terrify, defame or embarrass any person. Subsequent offenses would be a Class A1 misdemeanor. It also would be a Class A1 misdemeanor for a first offense when a temporary restraining order, injunction, or court order prohibiting the defendant from contact with the victim is in effect at the time of the offense.*** Current law makes it a Class 1 misdemeanor to communicate a threat to another person in violation of G.S. 14-277.1 (see attached).

The language in subsection (b) is almost identical to G.S. 14-196(a)(3) (see attached), which makes it a Class 2 misdemeanor to use telephone communications with the intent to harass another. The North Carolina Court of Appeals has upheld the constitutionality of that statute on the grounds that it prohibits conduct rather than speech or the communication of ideas.

Subsection (c) would make it a Class H felony for any person to introduce a computer virus into electronic mail or electronic communication.

Subsection (d) would provide that either offense is committed where the electronic mail or communication was originally sent, received, or first viewed by any person.

Subsection (e) would specifically exclude peaceable, nonviolent or nonthreatening activity intended to express political views, to provide lawful information to others, or that is otherwise constitutionally protected.

Subsection (f) would allow the providers of electronic mail and electronic communication to give information or assistance to authorized persons or to conduct electronic surveillance. The providers must have been provided with a signed court order authorizing this conduct.

The act would take effect December 1, 1999, and would apply to offenses committed on or after that date.

H813-SMRH-001

§ 14-277.1. Communicating threats.

(a) A person is guilty of a Class 1 misdemeanor if without lawful authority:
(1) He willfully threatens to physically injure the person or damage the property of another;
(2) The threat is communicated to the other person, orally, in writing, or by any other means;
(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and
(4) The person threatened believes that the threat will be carried out.
(b) A violation of this section is a Class 1 misdemeanor.

§ 14-196. Using profane, indecent or threatening language to any person over telephone; annoying or harassing by repeated telephoning or making false statements over telephone.

(a) It shall be unlawful for any person:

(1) To use in telephonic communications any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature or connotation;

(2) To use in telephonic communications any words or language threatening to inflict bodily harm to any person or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person;

(3) To telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number;

(4) To make a telephone call and fail to hang up or disengage the connection with the intent to disrupt the service of another;

(5) To telephone another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person telephoned or of any member of his family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass;

(6) To knowingly permit any telephone under his control to be used for any purpose prohibited by this section.

(b) Any of the above offenses may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. For purposes of this section, the term "telephonic communications" shall include communications made or received by way of a telephone answering machine or recorder, telefacsimile machine, or computer modem.

(c) Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

HOUSE BILL 814:
Financial Identity Fraud.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hensley
Date:	April 15, 1999	**Summary by:**	Robin S. Johnson
Version:	1st Edition-- PCS H814-CSRH-001		Committee Counsel

SUMMARY: The proposed committee substitute makes technical and clarifying changes to the original bill.

The PCS would create a new Class H felony—financial identity fraud. It would be unlawful for a person to (i) obtain or record identifying information that can be used to access the financial resources of another or (ii) access or attempt to access another person's financial resources by using that person's identifying information. These acts must be done without the other person's authorization or consent. In addition, the defendant must take these actions with the intent to unlawfully appropriate the financial resources of the other person. The offense would be committed in any county where part of the offense occurred, even if the defendant was never actually present in that county.

Identifying information is defined as social security numbers, drivers license numbers, financial institutions' account numbers, credit and debit card numbers, PIN numbers, electronic signatures, and other numbers or information that can be used to access a person's financial resources.

The PCS would specifically exclude from the offense certain lawful acts of obtaining another person's financial information and financial resources.

The punishment for a Class H felony ranges from 4-5 months community punishment (no priors) to a maximum sentence of 10-12 years incarceration. In addition to being punished as a Class H felony, the PCS would allow the court to order a defendant convicted of financial identity fraud to make restitution to any victims.

The PCS would become effective December 1, 1999, and would apply to offenses committed on or after that date.

BACKGROUND: According to a recent NCSL brief (see attached), financial identity fraud or identity theft is one of the country's fastest growing crimes. At least 10 states have enacted this type of legislation since 1996. Some are misdemeanors; some are felonies. House Bill 814 is modeled after the Georgia law. Also, in 1998, Congress enacted a similar federal law called the Identity Theft Protection Act.

BILL ANALYSIS: The PCS would create a new crime. There are existing criminal statutes, which could encompass the elements of financial identity fraud. These other laws include the Financial Transaction Card Crime Act (see attached), the unauthorized use of credit devices (see attached), and obtaining property by false pretenses. Financial identity fraud would be different in that it would allow for prosecution when someone takes or copies another person's identifying information with the intent to

defraud that person, even if he or she does not get to the next step of appropriating or attempting to appropriate the other's financial resources.

The PCS would make financial identity fraud a Class H felony. Restitution also may be ordered. The existing laws cited in the previous paragraph are classified as Class 2 misdemeanors and Class G or Class H felonies. Restitution also may be ordered upon conviction of some of these applicable crimes.

H814-SMRH-001

NCSL · LEGISBRIEF

February 1999 Vol. 7, No. 8

IDENTITY THEFT

By Rita Thaemert

It's one of the fastest growing crimes in the nation. And it's so simple: A thief obtains your Social Security number (SSN) or arms himself with a blank, preapproved credit application. Or he can pose as a loan officer and request credit reports with account numbers. Once he gets the information, the identity thief can open new accounts or establish lines of credit in your name. But forget the credit application and account numbers, your SSN unlocks a goldmine—educational, medical, financial and credit records. Unfortunately, victims (thousands a year) don't even know they've been robbed until they get outrageous charges on their credit card statements or a bad credit report. Some states and the federal government have taken steps to slow down the thieves.

State Actions

At least 10 states have enacted some form of identity theft legislation.

At least 10 states have enacted some form of identity theft legislation—Arizona, California, Georgia, Kansas, Mississippi, Missouri, Montana, New Jersey, West Virginia and Wisconsin. The first law passed in Arizona in 1996 reads, "A person commits 'taking the identity of another person' if the person knowingly takes the name, birth date or Social Security number of another person, without the consent of that other person, with the intent to obtain or use the other person's identity for any unlawful purpose or to cause loss to a person. Taking the identity of another person is a class 5 felony."

Recently California added a possible felony to its already existing misdemeanor charge for identity theft. The new law also says that court records must reflect the innocence of a person whose identity was falsely used.

Georgia passed the Personal Financial Security Act that defines the criminal offense of financial identity fraud, provides penalties, authorizes the attorney general to prosecute cases and repeals conflicting related laws. In addition to imprisonment, a person found guilty of financial identity fraud in Georgia may be ordered by the court to make restitution to victims.

Kansas law specifies that misuse of another's identification documents or personal identification numbers for economic benefit is a class A misdemeanor. It's a class B misdemeanor in Missouri to practice identity deception or fraud on an application for certification or licensure as a state certified real estate appraiser. Montana also applies a misdemeanor charge if bribery, theft or misrepresentation of identity are used to obtain health care information.

Identity Theft Laws

	Misdemeanor	Felony	Restitution	Nonfinancial Fraud	Credit Industry
Arizona	X	X			
California	X	X			
Colorado					X
Georgia	X		X		
Kansas	X			X	
Mississippi	X				
Missouri	X			X	
Montana	X				
New Jersey	X				X
West Virginia	X	X			
Wisconsin	X		X		
Federal		X	X		

Source: NCSL

NATIONAL CONFERENCE OF STATE LEGISLATURES

Executive Director, William T. Pound

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A person in New Jersey who comes into control of lost property or property that was mislaid or delivered by mistake is guilty of theft if, knowing the owner's identity and with intent to deprive the owner of property, he converts the property to his own use. West Virginia also made a felony offense of taking another's name for the purpose of conducting financial or credit transactions in that name. In Wisconsin it's called a misappropriation of personal identifying information and includes recovery of damages, court costs and attorneys' fees.

Other states have addressed the problem through legislation that gives consumers more control.

Other states have addressed the problem of identity theft through legislation to provide consumers more control over their credit information and allow theft victims to catch fraudulent accounts early and monitor credit reports for inaccurate data. Colorado passed a law in 1997 that requires credit bureaus, upon request, to provide state consumers one free copy of their credit report every year. The bill also requires, for the first time in any state, that credit bureaus send consumers a notice of their right to obtain a free annual credit report whenever there are three or more inquiries about an individual consumer or whenever there is a report that would place negative information in a consumer's file.

Colorado's law increased fines for credit reporting agencies that fail to correct false information within 30 days of notification. New Jersey consumers also can obtain an annual free copy of their credit report upon request. Other states that provide consumers with free access to their credit reports are Georgia (two per year), Maryland, Massachusetts and Vermont.

Federal Action

The federal Identity Theft Protection Act of 1998 was recently signed into law.

Congress recently passed the Identity Theft Protection Act of 1998. It amends the federal criminal code, making it unlawful for anyone to knowingly transfer or use, without lawful authority, another person's identification with the intent to commit unlawful activity that constitutes a violation of federal law or a felony under state or local law. The new law sets criminal penalties for first and subsequent offenses. It also provides for mandatory restitution for victims that may include payment of any costs, including attorneys' fees.

The U.S. Postal Service recently began a change of address policy that now requires post offices to send a "Move Validation Letter" to both an old and a new address, so that a thief cannot divert customer mail without their knowledge. The letter asks customers to call an 800 number if a change of address was not filed. An individual can be arrested if suspected of stealing mail or filing a fake change of address and prosecuted if he or she applies for a credit card using another's name.

Legislation alone is not the complete solution to the identity theft dilemma. Consumers must take steps to secure their own financial records. They should never provide personal information over the phone, except to someone known or an established organization; shred preapproved credit applications, credit card receipts and other financial documentation; and ask businesses to limit access to their personal data. The credit industry should provide individual consumers with copies of their credit reports; take steps to more strictly verify a credit applicant's identification; and track more closely identity fraud cases, data and statistics.

Selected References

http://www.privacyrights.org/identity.html
Smith, Robert Ellis. "Compilation of State and Federal Privacy Laws 1997," *Privacy Journal*, Providence, R.I.

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ARTICLE 19A.
Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means.

§ 14-113.1. Use of false or counterfeit credit device; unauthorized use of another's credit device; use after notice of revocation.

It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, or counterfeit telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device of another without the authority of the person to whom such number or device was issued, or by the use of any telephone number, credit number or other credit device in any case where such number or device has been revoked and notice of revocation has been given to the person to whom issued or he has knowledge or reason to believe that such revocation has occurred.

§ 14-113.2. Notice defined; prima facie evidence of receipt of notice.

The word "notice" as used in G.S. 14-113.1 shall be construed to include either notice given in person or notice given in writing to the person to whom the number or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after five days from the date of the deposit in the mail.

§ 14-113.3. Use of credit device as prima facie evidence of knowledge.

The presentation or use of a revoked, false, fictitious or counterfeit telephone number, credit number, or other credit device for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be prima facie evidence of knowledge that the said credit device is revoked, false, fictitious or counterfeit; and the unauthorized use of any telephone number, credit number or other credit device of another shall be prima facie evidence of knowledge that such use was without the authority of the person to whom such number or device was issued.

§ 14-113.4. Avoiding or attempting to avoid payment for telecommunication services.

It shall be unlawful for any person to avoid or attempt to avoid, or to cause another to avoid, the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities by the use of any fraudulent scheme, device, means or method.

§ 14-113.5. Making, distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.

(a) It shall be unlawful for any person knowingly to:

(1) Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunication service provider in violation of this Article, or

b. To conceal, or assist another to conceal, from any supplier of a telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any telecommunication, or

(2) Sell, possess, distribute, give, transport, or otherwise transfer to another or offer or advertise for sale any:

a. Unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for a purpose described in (1)a or (1)b above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling the unlawful telecommunication device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device; or

(3) Publish plans or instructions for making or assembling or using any unlawful telecommunication device, or

(4) Publish the number or code of an existing, cancelled, revoked or nonexistent telephone number, credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices with knowledge or reason to believe that it may be used to avoid the payment of any lawful telephone or telegraph toll charge under circumstances evincing an intent to have the telephone number, credit number, credit device or method of numbering or coding so used.

(5) Repealed by Session Laws 1995, c. 425, s. 1.

(b) Any unlawful telecommunication device, plans, instructions, or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section. Upon the conviction of a person for a violation of this section, the court may order the sheriff of the county in which the person was convicted to destroy as contraband or to otherwise lawfully dispose of the unlawful telecommunication device, plans, instructions, or publication.

(c) The following definitions apply in this section and in G.S. 14-113.6:

(1) Manufacture of an unlawful telecommunication device. - The production or assembly of an unlawful telecommunication device or the modification, alteration, programming or reprogramming of a telecommunication device to be capable of acquiring or facilitating

the acquisition of telecommunication service without the consent of the telecommunication service provider.

(2) Publish. - The communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(3) Telecommunication device. - Any type of instrument, device, machine or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component that is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(4) Telecommunication service. - Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature of telephone, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(5) Telecommunication service provider. - A person or entity providing telecommunication service, including, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(6) Unlawful telecommunication device. - Any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable, of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number or any telecommunication service without the consent of the telecommunication service provider. The term includes, telecommunications devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. This section shall not apply to any device operated by a law enforcement agency in the normal course of its activities.

§ 14-113.6. Penalties for violation; civil action.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor. However, if the offense is a violation of G.S. 14-113.5 and involves five or more unlawful telecommunication devices the person shall be guilty of a Class G felony.

(b) The court may, in addition to any other sentence authorized by law, order a person convicted of violating G.S. 14-113.5 to make restitution for the offense.

(c) Any person or entity aggrieved by a violation of G.S. 14-113.5 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law.

§ 14-113.6A. Venue of offenses.

(a) Any of the offenses described in Article 19A which involve the placement of telephone calls may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

(b) An offense under former G.S. 14-113.5(3) or 14-113.5(4) (see now G.S. 14-113.5(a)(3) or 14-113.5(a)(4)) may be deemed to have been committed at either the place at which the publication was initiated or at which the publication was received or at which the information so published was utilized to avoid or attempt to avoid the payment of any lawful telephone or telegraph toll charge.

§ 14-113.7. Article not construed as repealing § 14-100.

This Article shall not be construed as repealing G.S. 14-100.

§ 14-113.7A. Application of Article to credit cards.

This Article shall not be construed as being applicable to any credit card as the term is defined in G.S. 14-113.8.

ARTICLE 19B.
Financial Transaction Card Crime Act.

§ 14-113.8. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) Acquirer. - "Acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that authorizes a merchant to accept payment by financial transaction card for money, goods, services or anything else of value.

(1a) Automated Banking Device. - "Automated banking device" means any machine which when properly activated by a financial transaction card and/or personal identification code may be used for any of the purposes for which a financial transaction card may be used.

(2) Cardholder. - "Cardholder" means the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

(3) Expired Financial Transaction Card. - "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown on it has elapsed.

(4) Financial Transaction Card. - "Financial transaction card" or "FTC" means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder:

a. In obtaining money, goods, services, or anything else of value on credit; or

b. In certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business; or

c. In providing the cardholder access to a demand deposit account or time deposit account for the purpose of:

1. Making deposits of money or checks therein; or

2. Withdrawing funds in the form of money, money orders, or traveler's checks therefrom; or

3. Transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account; or

4. Transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein; or

5. For the purchase of goods, services or anything else of value; or

6. Obtaining information pertaining to any demand deposit account or time deposit account;

d. But shall not include a telephone number, credit number, or other credit device which is covered by the provisions of Article 19A of this Chapter.

(5) Issuer. - "Issuer" means the business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(6) Personal Identification Code. - "Personal identification code" means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card by the issuer to permit authorized electronic use of that FTC.
(7) Presenting. - "Presenting" means, as used herein, those actions taken by a cardholder or any person to introduce a financial transaction card into an automated banking device, including utilization of a personal identification code, or merely displaying or showing a financial transaction card to the issuer, or to any person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud.
(8) Receives. - "Receives" or "receiving" means acquiring possession or control or accepting a financial transaction card as security for a loan.
(9) Revoked Financial Transaction Card. - "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

§ 14-113.9. Financial transaction card theft.
(a) A person is guilty of financial transaction card theft when:
(1) He takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder; or
(2) He receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or
(3) He, not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the issuer; or
(4) He, not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.
(b) Credit card theft is punishable as provided by G.S. 14-113.17(b).

§ 14-113.10. Prima facie evidence of theft.
When a person has in his possession or under his control financial transaction cards issued in the names of two or more other persons other than members of his immediate family, such possession shall be prima facie evidence that such financial transaction cards have been obtained in violation of G.S. 14-113.9(a).

§ 14-113.11. Forgery of financial transaction card.
(a) A person is guilty of financial transaction card forgery when:
(1) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely embosses a purported financial transaction card or utters such a financial transaction card; or

(2) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely encodes, duplicates or alters existing encoded information on a financial transaction card or utters such a financial transaction card; or

(3) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a financial transaction card.

(b) A person falsely makes a financial transaction card when he makes or draws, in whole or in part, a device or instrument which purports to be the financial transaction card of a named issuer but which is not such a financial transaction card because the issuer did not authorize the making or drawing, or alters a financial transaction card which was validly issued.

(c) A person falsely embosses a financial transaction card when, without authorization of the named issuer, he completes a financial transaction card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder.

(d) A person falsely encodes a financial transaction card when, without authorization of the purported issuer, he records magnetically, electronically, electro-magnetically or by any other means whatsoever, information on a financial transaction card which will permit acceptance of that card by any automated banking device. Conviction of financial transaction card forgery shall be punishable as provided in G.S. 14-113.17(b).

§ 14-113.12. Prima facie evidence of forgery.

(a) When a person, other than the purported issuer, possesses two or more financial transaction cards which are falsely made or falsely embossed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(1) or 14-113.11(a)(2).

(b) When a person, other than the cardholder or a person authorized by him possesses two or more financial transaction cards which are signed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(3).

§ 14-113.13. Financial transaction card fraud.

(a) A person is guilty of financial transaction card fraud when, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he

(1) Uses for the purpose of obtaining money, goods, services or anything else of value a financial transaction card obtained or retained, or which was received with knowledge that it was obtained or retained, in violation of G.S. 14-113.9 or 14-113.11 or a financial transaction card which he knows is forged, altered, expired, revoked or was obtained as a result of a fraudulent application in violation of G.S. 14-113.13(c); or

(2) Obtains money, goods, services, or anything else of value by:

a. Representing without the consent of the cardholder that he is the holder of a specified card; or

b. Presenting the financial transaction card without the authorization or permission of the cardholder; or

c. Representing that he is the holder of a card and such card has not in fact been issued; or

d. Using a financial transaction card to knowingly and willfully exceed:
1. The actual balance of a demand deposit account or time deposit account; or
2. An authorized credit line in an amount which exceeds such authorized credit line in the amount of five hundred dollars ($500.00), or fifty percent (50%) of such authorized credit line, whichever is greater; or
(3) Obtains control over a financial transaction card as security for debt; or
(4) Deposits into his account or any account, by means of an automated banking device, a false, fictitious, forged, altered or counterfeit check, draft, money order, or any other such document not his lawful or legal property; or
(5) Receives money, goods, services or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered or counterfeit or that the above deposited item was not his lawful or legal property.
(b) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person is guilty of a financial transaction card fraud when, with intent to defraud the issuer or the cardholder, he
(1) Furnishes money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained in violation of G.S. 14-113.9, or a financial transaction card which he knows is forged, expired or revoked; or
(2) Fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished.
Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(a) if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period. Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.
(c) A person is guilty of financial transaction card fraud when, upon application for a financial transaction card to an issuer, he knowingly makes or causes to be made a false statement or report relative to his name, occupation, financial condition, assets, or liabilities; or willfully and substantially overvalues any assets, or willfully omits or substantially undervalues any indebtedness for the purpose of influencing the issuer to issue a financial transaction card.
Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).
(c1) A person authorized by an acquirer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card or a financial transaction card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, acquirer, or cardholder, remits to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such person, his agent or employee, is guilty of financial transaction card fraud.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(d) A cardholder is guilty of financial transaction card fraud when he willfully, knowingly, and with an intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, submits, verbally or in writing, to the issuer or any other person, any false notice or report of the theft, loss, disappearance, or nonreceipt of his financial transaction card.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(e) In any prosecution for violation of G.S. 14-113.13, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

(f) For purposes of this section, revocation shall be construed to include either notice given in person or notice given in writing to the person to whom the financial transaction card and/or personal identification code was issued. Notice of revocation shall be immediate when notice is given in person. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after seven days from the date of the deposit in the mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

§ 14-113.14. Criminal possession of financial transaction card forgery devices.

(a) A person is guilty of criminal possession of financial transaction card forgery devices when:

(1) He is a person other than the cardholder and possesses two or more incomplete financial transaction cards, with intent to complete them without the consent of the issuer; or

(2) He possesses, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be financial transaction cards of an issuer who has not consented to the preparation of such financial transaction cards.

(b) A financial transaction card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, encoded or written upon it.

Conviction of criminal possession of financial transaction card forgery devices is punishable as provided in G.S. 14-113.17(b).

§ 14-113.15. Criminal receipt of goods and services fraudulently obtained.

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of G.S. 14-113.13(a) with the knowledge or belief that the same were obtained in violation of G.S. 14-113.13(a). Conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(a) if the value of all the money,

goods, services and anything else of value, obtained in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.

§ 14-113.15A. Criminal factoring of financial transaction card records.

Any person who, without the acquirer's express authorization, employs or solicits an authorized merchant, or any agent or employee of such merchant, to remit to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such merchant, his agent or employee, is guilty of a felony punishable as provided in G.S. 14-113.17(b).

§ 14-113.16. Presumption of criminal receipt of goods and services fraudulently obtained.

A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company from other than an authorized agent of such company which was acquired in violation of G.S. 14-113.13(a) without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of G.S. 14-113.13(a).

§ 14-113.17. Punishment and penalties.

(a) A person who is subject to the punishment and penalties of this Article shall be guilty of a Class 2 misdemeanor.

(b) A crime punishable under this Article is punishable as a Class I felony.

§ 14-100. Obtaining property by false pretenses.

(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: 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.

(b) Evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.

(c) For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 814

Short Title: Financial Identity Fraud. (Public)

Sponsors: Representatives Hensley; and Goodwin.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

It is unlawful for any person, without the authorization or permission of another person, and with the intent unlawfully to appropriate financial resources of that other person to his or her own use or to the use of a third party to do the following:

(1) Obtain or record identifying information that would assist in accessing the financial resources of the other person; or

(2) Access or attempt to access the financial resources of the other person through the use of identifying information. Such identifying information shall include, but not be limited to, the following:

a. Social security numbers.

b. Drivers license numbers.

c. Checking account numbers.

d. Savings account numbers.

e. Credit card numbers.

f. Debit card numbers.

g. Personal identification (PIN) numbers.
h. Electronic identification numbers.
i. Digital signatures.
j. Any other numbers or information that can be used to access a person's financial resources.

"**§ 14-113.21. Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.

(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.

(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"**§ 14-113.22. Venue of offenses.**

In any criminal proceeding brought pursuant to this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in such county.

"**§ 14-113.23. Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of such fraud."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

DATE April 13, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Russell W DeMunbrun III	District Attorney's Office
Jodi Brannum	Intern w/General Assembly
Denny McGuire	Commerce / ITS
Ann Case	NCRMA
Nancy Thompson	UNCCSA
Mark Gleason	Capitol Group
Bradley A. K	Bewley & Assoc.
Charles Cramer	NCATA
Kim Nilsen	Observer Times
Alan Miles	Bailey & Dixon LLP
John Bragg + crew	UNC-TV
John F. Mitchell	Wayne Chamber of Commerce Future Leadership
Kristin A. Cattle	"
Mary-Kathryn Pate	"
John Fitzgerald	"
Jim Madern	"
Christopher M. [illegible]	"
Melissa L. Hall	"
Edward Shaver Jr.	"
Brandon Smith	"
Mark Cecil	"
Jennifer Russell	"
Abigail N. [illegible]	"
Bill Brasher	"

VISITOR REGISTRATION SHEET

DATE April 13, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Lewis	Wayne Co. Chamber of Commerce Jr. Leadership
Monika Barklee	Wayne Co. Chamber of Commerce Jr. Leadership
Karen Gottoni	Division of Aging
Dwight Eisenhower	Military-Industrial Co.
Melissa Lovell	DOJ

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

April 15, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 814

STAFF EXPLANATION

HOUSE BILL 760

STAFF EXPLANATION

HOUSE BILL 815

STAFF EXPLANATION

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, APRIL 15, 1999

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the Committee were Adam Miller and Phillip Stewart.

The bills on the agenda were HB 814, sponsored by Rep. Hensley, HB 760, sponsored by Rep. Sherrill, and HB 815, sponsored by Rep. Hensley.

The Committee resumed their discussion of **HB 814 (Short Title: An Act To Create The Criminal Offense Of Financial Identity Fraud).** Rep. Hensley was recognized to come forward and explain the bill. There was a Proposed Committee Substitute that had been prepared by Staff. Rep. Capps moved that the Proposed Committee Substitute be brought before the committee for discussion. Rep. Michaux moved for a favorable report to the committee substitute and an unfavorable report to the original bill. The Committee passed the motion.

HB 760 (Short title: An Act to Increase the Criminal Penalties for Certain Arson Offenses) was the next bill discussed by the Committee. There was a Proposed Committee Substitute, and Rep. Capps moved that the committee substitute be brought before the committee. Rep. Sherrill was recognized to explain the bill and staff counsel made comments in regard to the bill. The Chair recognized Mr. Ron Moore, District Attorney for the 28th District, and Harley Shuford, Chairman of the International Arson Association, who spoke in support of the bill. Rep. Michaux made a motion for a favorable report of the committee substitute and an unfavorable report to the original bill. It was noted that a fiscal note was needed and was not ready at this time. Rep. Michaux amended his motion to refer the committee substitute to the committee on Appropriations for a fiscal note. The motion passed the committee.

HB 815 (Short title: Left Turn on Red) was the next bill before the committee. There was a Proposed Committee Substitute. Rep. Hensley commented that the bill would need to be referred to Appropriations. The Committee would continue the discussion of this bill at another meeting.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot	Rep. Cansler
Rep. Crawford	Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill	Rep. Capps	Rep. Hensley	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 814 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H814-CSRH-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 814
THIS IS A DRAFT 14-APR-99 21:00:22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"§ 14-113.20. Financial identity fraud.

(a) A person is guilty of financial identity fraud when the person intends to appropriate unlawfully the financial resources of another person and, without the authorization or consent of that other person, does one of the following:

(1) Obtains or records identifying information that would assist in accessing the financial resources of the other person.

(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.
(2) Drivers license numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

"**§ 14-113.21. Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.
(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.
(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"**§ 14-113.22. Venue of offenses.**

In any criminal proceeding brought under this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.23. Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of this fraud."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 814
Proposed Committee Substitute H814-PCS1223-RH

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

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(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

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(b) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of this fraud."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 814

Short Title: Financial Identity Fraud. (Public)

Sponsors: Representatives Hensley; and Goodwin.

Referred to: Judiciary II.

April 1, 1999

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(1) Obtain or record identifying information that would assist in accessing the financial resources of the other person; or

(2) Access or attempt to access the financial resources of the other person through the use of identifying information. Such identifying information shall include, but not be limited to, the following:

a. Social security numbers.

b. Drivers license numbers.

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(b) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of such fraud."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 814:
Financial Identity Fraud.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hensley
Date:	April 15, 1999	**Summary by:**	Robin S. Johnson
Version:	1st Edition-- PCS H814-CSRH-001		Committee Counsel

SUMMARY: The proposed committee substitute makes technical and clarifying changes to the original bill.

The PCS would create a new Class H felony—financial identity fraud. It would be unlawful for a person to (i) obtain or record identifying information that can be used to access the financial resources of another or (ii) access or attempt to access another person's financial resources by using that person's identifying information. These acts must be done without the other person's authorization or consent. In addition, the defendant must take these actions with the intent to unlawfully appropriate the financial resources of the other person. The offense would be committed in any county where part of the offense occurred, even if the defendant was never actually present in that county.

Identifying information is defined as social security numbers, drivers license numbers, financial institutions' account numbers, credit and debit card numbers, PIN numbers, electronic signatures, and other numbers or information that can be used to access a person's financial resources.

The PCS would specifically exclude from the offense certain lawful acts of obtaining another person's financial information and financial resources.

The punishment for a Class H felony ranges from 4-5 months community punishment (no priors) to a maximum sentence of 10-12 years incarceration. In addition to being punished as a Class H felony, the PCS would allow the court to order a defendant convicted of financial identity fraud to make restitution to any victims.

The PCS would become effective December 1, 1999, and would apply to offenses committed on or after that date.

BACKGROUND: According to a recent NCSL brief (see attached), financial identity fraud or identity theft is one of the country's fastest growing crimes. At least 10 states have enacted this type of legislation since 1996. Some are misdemeanors; some are felonies. House Bill 814 is modeled after the Georgia law. Also, in 1998, Congress enacted a similar federal law called the Identity Theft Protection Act.

BILL ANALYSIS: The PCS would create a new crime. There are existing criminal statutes, which could encompass the elements of financial identity fraud. These other laws include the Financial Transaction Card Crime Act (see attached), the unauthorized use of credit devices (see attached), and obtaining property by false pretenses. Financial identity fraud would be different in that it would allow for prosecution when someone takes or copies another person's identifying information with the intent to

defraud that person, even if he or she does not get to the next step of appropriating or attempting to appropriate the other's financial resources.

The PCS would make financial identity fraud a Class H felony. Restitution also may be ordered. The existing laws cited in the previous paragraph are classified as Class 2 misdemeanors and Class G or Class H felonies. Restitution also may be ordered upon conviction of some of these applicable crimes.

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IDENTITY THEFT

By Rita Thaemert

It's one of the fastest growing crimes in the nation. And it's so simple: A thief obtains your Social Security number (SSN) or arms himself with a blank, preapproved credit application. Or he can pose as a loan officer and request credit reports with account numbers. Once he gets the information, the identity thief can open new accounts or establish lines of credit in your name. But forget the credit application and account numbers, your SSN unlocks a goldmine—educational, medical, financial and credit records. Unfortunately, victims (thousands a year) don't even know they've been robbed until they get outrageous charges on their credit card statements or a bad credit report. Some states and the federal government have taken steps to slow down the thieves.

State Actions

At least 10 states have enacted some form of identity theft legislation.

At least 10 states have enacted some form of identity theft legislation—Arizona, California, Georgia, Kansas, Mississippi, Missouri, Montana, New Jersey, West Virginia and Wisconsin. The first law passed in Arizona in 1996 reads, "A person commits 'taking the identity of another person' if the person knowingly takes the name, birth date or Social Security number of another person, without the consent of that other person, with the intent to obtain or use the other person's identity for any unlawful purpose or to cause loss to a person. Taking the identity of another person is a class 5 felony."

Recently California added a possible felony to its already existing misdemeanor charge for identity theft. The new law also says that court records must reflect the innocence of a person whose identity was falsely used.

Georgia passed the Personal Financial Security Act that defines the criminal offense of financial identity fraud, provides penalties, authorizes the attorney general to prosecute cases and repeals conflicting related laws. In addition to imprisonment, a person found guilty of financial identity fraud in Georgia may be ordered by the court to make restitution to victims.

Kansas law specifies that misuse of another's identification documents or personal identification numbers for economic benefit is a class A misdemeanor. It's a class B misdemeanor in Missouri to practice identity deception or fraud on an application for certification or licensure as a state certified real estate appraiser. Montana also applies a misdemeanor charge if bribery, theft or misrepresentation of identity are used to obtain health care information.

Identity Theft Laws

	Misdemeanor	Felony	Restitution	Nonfinancial Fraud	Credit Industry
Arizona	X	X			
California	X	X			
Colorado					X
Georgia	X		X		
Kansas	X			X	
Mississippi	X				
Missouri	X			X	
Montana	X				
New Jersey	X				X
West Virginia	X	X			
Wisconsin	X		X		
Federal		X	X		

Source: NCSL

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A person in New Jersey who comes into control of lost property or property that was mislaid or delivered by mistake is guilty of theft if, knowing the owner's identity and with intent to deprive the owner of property, he converts the property to his own use. West Virginia also made a felony offense of taking another's name for the purpose of conducting financial or credit transactions in that name. In Wisconsin it's called a misappropriation of personal identifying information and includes recovery of damages, court costs and attorneys' fees.

Other states have addressed the problem of identity theft through legislation to provide consumers more control over their credit information and allow theft victims to catch fraudulent accounts early and monitor credit reports for inaccurate data. Colorado passed a law in 1997 that requires credit bureaus, upon request, to provide state consumers one free copy of their credit report every year. The bill also requires, for the first time in any state, that credit bureaus send consumers a notice of their right to obtain a free annual credit report whenever there are three or more inquiries about an individual consumer or whenever there is a report that would place negative information in a consumer's file.

Other states have addressed the problem through legislation that gives consumers more control.

Colorado's law increased fines for credit reporting agencies that fail to correct false information within 30 days of notification. New Jersey consumers also can obtain an annual free copy of their credit report upon request. Other states that provide consumers with free access to their credit reports are Georgia (two per year), Maryland, Massachusetts and Vermont.

Federal Action

Congress recently passed the Identity Theft Protection Act of 1998. It amends the federal criminal code, making it unlawful for anyone to knowingly transfer or use, without lawful authority, another person's identification with the intent to commit unlawful activity that constitutes a violation of federal law or a felony under state or local law. The new law sets criminal penalties for first and subsequent offenses. It also provides for mandatory restitution for victims that may include payment of any costs, including attorneys' fees.

The federal Identity Theft Protection Act of 1998 was recently signed into law.

The U.S. Postal Service recently began a change of address policy that now requires post offices to send a "Move Validation Letter" to both an old and a new address, so that a thief cannot divert customer mail without their knowledge. The letter asks customers to call an 800 number if a change of address was not filed. An individual can be arrested if suspected of stealing mail or filing a fake change of address and prosecuted if he or she applies for a credit card using another's name.

Legislation alone is not the complete solution to the identity theft dilemma. Consumers must take steps to secure their own financial records. They should never provide personal information over the phone, except to someone known or an established organization; shred preapproved credit applications, credit card receipts and other financial documentation; and ask businesses to limit access to their personal data. The credit industry should provide individual consumers with copies of their credit reports; take steps to more strictly verify a credit applicant's identification; and track more closely identity fraud cases, data and statistics.

Selected References

http://www.privacyrights.org/identity.html
Smith, Robert Ellis. "Compilation of State and Federal Privacy Laws 1997," *Privacy Journal*, Providence, R.I.

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ARTICLE 19A.
Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means.

§ 14-113.1. Use of false or counterfeit credit device; unauthorized use of another's credit device; use after notice of revocation.

It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, or counterfeit telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device of another without the authority of the person to whom such number or device was issued, or by the use of any telephone number, credit number or other credit device in any case where such number or device has been revoked and notice of revocation has been given to the person to whom issued or he has knowledge or reason to believe that such revocation has occurred.

§ 14-113.2. Notice defined; prima facie evidence of receipt of notice.

The word "notice" as used in G.S. 14-113.1 shall be construed to include either notice given in person or notice given in writing to the person to whom the number or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after five days from the date of the deposit in the mail.

§ 14-113.3. Use of credit device as prima facie evidence of knowledge.

The presentation or use of a revoked, false, fictitious or counterfeit telephone number, credit number, or other credit device for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be prima facie evidence of knowledge that the said credit device is revoked, false, fictitious or counterfeit; and the unauthorized use of any telephone number, credit number or other credit device of another shall be prima facie evidence of knowledge that such use was without the authority of the person to whom such number or device was issued.

§ 14-113.4. Avoiding or attempting to avoid payment for telecommunication services.

It shall be unlawful for any person to avoid or attempt to avoid, or to cause another to avoid, the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities by the use of any fraudulent scheme, device, means or method.

§ 14-113.5. Making, distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.

(a) It shall be unlawful for any person knowingly to:

(1) Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunication service provider in violation of this Article, or

b. To conceal, or assist another to conceal, from any supplier of a telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any telecommunication, or

(2) Sell, possess, distribute, give, transport, or otherwise transfer to another or offer or advertise for sale any:

a. Unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for a purpose described in (1)a or (1)b above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling the unlawful telecommunication device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device; or

(3) Publish plans or instructions for making or assembling or using any unlawful telecommunication device, or

(4) Publish the number or code of an existing, cancelled, revoked or nonexistent telephone number, credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices with knowledge or reason to believe that it may be used to avoid the payment of any lawful telephone or telegraph toll charge under circumstances evincing an intent to have the telephone number, credit number, credit device or method of numbering or coding so used.

(5) Repealed by Session Laws 1995, c. 425, s. 1.

(b) Any unlawful telecommunication device, plans, instructions, or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section. Upon the conviction of a person for a violation of this section, the court may order the sheriff of the county in which the person was convicted to destroy as contraband or to otherwise lawfully dispose of the unlawful telecommunication device, plans, instructions, or publication.

(c) The following definitions apply in this section and in G.S. 14-113.6:

(1) Manufacture of an unlawful telecommunication device. - The production or assembly of an unlawful telecommunication device or the modification, alteration, programming or reprogramming of a telecommunication device to be capable of acquiring or facilitating

the acquisition of telecommunication service without the consent of the telecommunication service provider.

(2) Publish. - The communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(3) Telecommunication device. - Any type of instrument, device, machine or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component that is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(4) Telecommunication service. - Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature of telephone, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(5) Telecommunication service provider. - A person or entity providing telecommunication service, including, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(6) Unlawful telecommunication device. - Any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable, of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number or any telecommunication service without the consent of the telecommunication service provider. The term includes, telecommunications devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. This section shall not apply to any device operated by a law enforcement agency in the normal course of its activities.

§ 14-113.6. Penalties for violation; civil action.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor. However, if the offense is a violation of G.S. 14-113.5 and involves five or more unlawful telecommunication devices the person shall be guilty of a Class G felony.

(b) The court may, in addition to any other sentence authorized by law, order a person convicted of violating G.S. 14-113.5 to make restitution for the offense.

(c) Any person or entity aggrieved by a violation of G.S. 14-113.5 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law.

§ 14-113.6A. Venue of offenses.

(a) Any of the offenses described in Article 19A which involve the placement of telephone calls may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

(b) An offense under former G.S. 14-113.5(3) or 14-113.5(4) (see now G.S. 14-113.5(a)(3) or 14-113.5(a)(4)) may be deemed to have been committed at either the place at which the publication was initiated or at which the publication was received or at which the information so published was utilized to avoid or attempt to avoid the payment of any lawful telephone or telegraph toll charge.

§ 14-113.7. Article not construed as repealing § 14-100.

This Article shall not be construed as repealing G.S. 14-100.

§ 14-113.7A. Application of Article to credit cards.

This Article shall not be construed as being applicable to any credit card as the term is defined in G.S. 14-113.8.

ARTICLE 19B.
Financial Transaction Card Crime Act.

§ 14-113.8. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) Acquirer. - "Acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that authorizes a merchant to accept payment by financial transaction card for money, goods, services or anything else of value.

(1a) Automated Banking Device. - "Automated banking device" means any machine which when properly activated by a financial transaction card and/or personal identification code may be used for any of the purposes for which a financial transaction card may be used.

(2) Cardholder. - "Cardholder" means the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

(3) Expired Financial Transaction Card. - "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown on it has elapsed.

(4) Financial Transaction Card. - "Financial transaction card" or "FTC" means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder:

a. In obtaining money, goods, services, or anything else of value on credit; or

b. In certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business; or

c. In providing the cardholder access to a demand deposit account or time deposit account for the purpose of:

1. Making deposits of money or checks therein; or

2. Withdrawing funds in the form of money, money orders, or traveler's checks therefrom; or

3. Transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account; or

4. Transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein; or

5. For the purchase of goods, services or anything else of value; or

6. Obtaining information pertaining to any demand deposit account or time deposit account;

d. But shall not include a telephone number, credit number, or other credit device which is covered by the provisions of Article 19A of this Chapter.

(5) Issuer. - "Issuer" means the business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(6) Personal Identification Code. - "Personal identification code" means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card by the issuer to permit authorized electronic use of that FTC.
(7) Presenting. - "Presenting" means, as used herein, those actions taken by a cardholder or any person to introduce a financial transaction card into an automated banking device, including utilization of a personal identification code, or merely displaying or showing a financial transaction card to the issuer, or to any person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud.
(8) Receives. - "Receives" or "receiving" means acquiring possession or control or accepting a financial transaction card as security for a loan.
(9) Revoked Financial Transaction Card. - "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

§ 14-113.9. Financial transaction card theft.
(a) A person is guilty of financial transaction card theft when:
(1) He takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder; or
(2) He receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or
(3) He, not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the issuer; or
(4) He, not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.
(b) Credit card theft is punishable as provided by G.S. 14-113.17(b).

§ 14-113.10. Prima facie evidence of theft.
When a person has in his possession or under his control financial transaction cards issued in the names of two or more other persons other than members of his immediate family, such possession shall be prima facie evidence that such financial transaction cards have been obtained in violation of G.S. 14-113.9(a).

§ 14-113.11. Forgery of financial transaction card.
(a) A person is guilty of financial transaction card forgery when:
(1) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely embosses a purported financial transaction card or utters such a financial transaction card; or

(2) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely encodes, duplicates or alters existing encoded information on a financial transaction card or utters such a financial transaction card; or
(3) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a financial transaction card.
(b) A person falsely makes a financial transaction card when he makes or draws, in whole or in part, a device or instrument which purports to be the financial transaction card of a named issuer but which is not such a financial transaction card because the issuer did not authorize the making or drawing, or alters a financial transaction card which was validly issued.
(c) A person falsely embosses a financial transaction card when, without authorization of the named issuer, he completes a financial transaction card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder.
(d) A person falsely encodes a financial transaction card when, without authorization of the purported issuer, he records magnetically, electronically, electro-magnetically or by any other means whatsoever, information on a financial transaction card which will permit acceptance of that card by any automated banking device. Conviction of financial transaction card forgery shall be punishable as provided in G.S. 14-113.17(b).

§ 14-113.12. Prima facie evidence of forgery.
(a) When a person, other than the purported issuer, possesses two or more financial transaction cards which are falsely made or falsely embossed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(1) or 14-113.11(a)(2).
(b) When a person, other than the cardholder or a person authorized by him possesses two or more financial transaction cards which are signed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(3).

§ 14-113.13. Financial transaction card fraud.
(a) A person is guilty of financial transaction card fraud when, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he
(1) Uses for the purpose of obtaining money, goods, services or anything else of value a financial transaction card obtained or retained, or which was received with knowledge that it was obtained or retained, in violation of G.S. 14-113.9 or 14-113.11 or a financial transaction card which he knows is forged, altered, expired, revoked or was obtained as a result of a fraudulent application in violation of G.S. 14-113.13(c); or
(2) Obtains money, goods, services, or anything else of value by:
a. Representing without the consent of the cardholder that he is the holder of a specified card; or
b. Presenting the financial transaction card without the authorization or permission of the cardholder; or
c. Representing that he is the holder of a card and such card has not in fact been issued; or

d. Using a financial transaction card to knowingly and willfully exceed:
1. The actual balance of a demand deposit account or time deposit account; or
2. An authorized credit line in an amount which exceeds such authorized credit line in the amount of five hundred dollars ($500.00), or fifty percent (50%) of such authorized credit line, whichever is greater; or
(3) Obtains control over a financial transaction card as security for debt; or
(4) Deposits into his account or any account, by means of an automated banking device, a false, fictitious, forged, altered or counterfeit check, draft, money order, or any other such document not his lawful or legal property; or
(5) Receives money, goods, services or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered or counterfeit or that the above deposited item was not his lawful or legal property.
(b) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person is guilty of a financial transaction card fraud when, with intent to defraud the issuer or the cardholder, he
(1) Furnishes money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained in violation of G.S. 14-113.9, or a financial transaction card which he knows is forged, expired or revoked; or
(2) Fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished.
Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(a) if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period. Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.
(c) A person is guilty of financial transaction card fraud when, upon application for a financial transaction card to an issuer, he knowingly makes or causes to be made a false statement or report relative to his name, occupation, financial condition, assets, or liabilities; or willfully and substantially overvalues any assets, or willfully omits or substantially undervalues any indebtedness for the purpose of influencing the issuer to issue a financial transaction card.
Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).
(c1) A person authorized by an acquirer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card or a financial transaction card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, acquirer, or cardholder, remits to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such person, his agent or employee, is guilty of financial transaction card fraud.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(d) A cardholder is guilty of financial transaction card fraud when he willfully, knowingly, and with an intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, submits, verbally or in writing, to the issuer or any other person, any false notice or report of the theft, loss, disappearance, or nonreceipt of his financial transaction card.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(e) In any prosecution for violation of G.S. 14-113.13, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

(f) For purposes of this section, revocation shall be construed to include either notice given in person or notice given in writing to the person to whom the financial transaction card and/or personal identification code was issued. Notice of revocation shall be immediate when notice is given in person. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after seven days from the date of the deposit in the mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

§ 14-113.14. Criminal possession of financial transaction card forgery devices.

(a) A person is guilty of criminal possession of financial transaction card forgery devices when:

(1) He is a person other than the cardholder and possesses two or more incomplete financial transaction cards, with intent to complete them without the consent of the issuer; or

(2) He possesses, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be financial transaction cards of an issuer who has not consented to the preparation of such financial transaction cards.

(b) A financial transaction card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, encoded or written upon it.

Conviction of criminal possession of financial transaction card forgery devices is punishable as provided in G.S. 14-113.17(b).

§ 14-113.15. Criminal receipt of goods and services fraudulently obtained.

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of G.S. 14-113.13(a) with the knowledge or belief that the same were obtained in violation of G.S. 14-113.13(a). Conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(a) if the value of all the money,

goods, services and anything else of value, obtained in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.

§ 14-113.15A. Criminal factoring of financial transaction card records.

Any person who, without the acquirer's express authorization, employs or solicits an authorized merchant, or any agent or employee of such merchant, to remit to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such merchant, his agent or employee, is guilty of a felony punishable as provided in G.S. 14-113.17(b).

§ 14-113.16. Presumption of criminal receipt of goods and services fraudulently obtained.

A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company from other than an authorized agent of such company which was acquired in violation of G.S. 14-113.13(a) without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of G.S. 14-113.13(a).

§ 14-113.17. Punishment and penalties.

(a) A person who is subject to the punishment and penalties of this Article shall be guilty of a Class 2 misdemeanor.

(b) A crime punishable under this Article is punishable as a Class I felony.

§ 14-100. Obtaining property by false pretenses.

(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: 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.

(b) Evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.

(c) For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 760 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR CERTAIN ARSON OFFENSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 760
PROPOSED COMMITTEE SUBSTITUTE H760-CSLH-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Amend Arson Laws. (Public)

Sponsors:

Referred to: Judiciary II.

March 31, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR CERTAIN ARSON OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a ~~Class D~~ Class B2 felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a ~~Class G~~ Class C felony."

Section 2. G.S. 14-59 reads as rewritten:

"**§ 14-59. Burning of certain public buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, the State Capitol, the Legislative Building, the Justice Building or any building owned or occupied by the State or any of its agencies, institutions or subdivisions or by any county, incorporated city or town or other governmental or

quasi-governmental entity, he shall be punished as a ~~Class F~~ Class C felon."

Section 3. G.S. 14-60 reads as rewritten:

"**§ 14-60. Burning of schoolhouses or buildings of educational institutions.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any schoolhouse or building owned, leased or used by any public or private school, college or educational institution, he shall be punished as a ~~Class F~~ Class C felon."

Section 4. G.S. 14-61 reads as rewritten:

"**§ 14-61. Burning of certain bridges and buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any public bridge, or private toll bridge, or the bridge of any incorporated company, or any fire-engine house or rescue-squad building, or any house belonging to an incorporated company or unincorporated association and used in the business of such company or association, he shall be punished as a ~~Class F~~ Class C felon."

Section 5. G.S. 14-62 reads as rewritten:

"**§ 14-62. Burning of certain buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any uninhabited house, or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or granary, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be punished as ~~a Class F felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 6. G.S. 14-62.1 reads as rewritten:

"**§ 14-62.1. Burning of building or structure in process of construction.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any building or structure in the process of construction for use or intended to be used as a dwelling house or in carrying on any trade or manufacture, or otherwise, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 7. G.S. 14-62.2 reads as rewritten:

"**§ 14-62.2. Burning of churches and certain other religious buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any church, chapel, or meetinghouse, the person shall be punished as a ~~Class E~~ Class C felon."

Section 8. G.S. 14-63 reads as rewritten:

"**§ 14-63. Burning of boats and barges.**

(a) If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any boat, barge, ferry or float, without the consent of the owner thereof, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony.

(b) In the event the consent of the owner is given for an unlawful or fraudulent purpose, however, the penalty provisions of this section shall remain in full force and effect."

Section 9. G.S. 14-65 reads as rewritten:

"**§ 14-65. Fraudulently setting fire to dwelling houses.**

If any person, being the occupant of any building used as a dwelling house, whether such person be the owner thereof or not, or, being the owner of any building designed or intended as a dwelling house, shall wantonly and willfully or for a fraudulent purpose set fire to or burn or cause to be burned, or aid, counsel or procure the burning of such building, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 10. G.S. 14-66 reads as rewritten:

"**§ 14-66. Burning of personal property.**

If any person shall wantonly and willfully set fire to or burn, or cause to be burned, or aid, counsel or procure the burning of, any goods, wares, merchandise or other chattels or personal property of any kind, whether or not the same shall at the time be insured by any person or corporation against loss or damage by fire, with intent to injure or prejudice the insurer, the creditor or the person owning the property, or any other person, whether the property is that of such person or another, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 11. G.S. 14-67.1 reads as rewritten:

"**§ 14-67.1. Burning other buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of

any building or other structure of any type not otherwise covered by the provisions of this Article, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 12. G.S. 14-136 reads as rewritten:

"§ 14-136. Setting fire to grass and brushlands and woodlands.

(a) ~~If~~ Except as provided by subsection (b) of this section, if any person shall intentionally set fire to any grassland, brushland or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and without also taking care to watch such fire while burning and to extinguish it before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a Class 2 misdemeanor for the first offense, and for a second or any subsequent similar offense shall be guilty of a Class 1 misdemeanor. ~~If intent to damage the property of another shall be shown, said person shall be punished as a Class I felon.~~

(b) If it is shown that a person who violates subsection (a) of this section had the intent to damage the property of another, then the person shall be punished as follows:

(1) If the property damage and suppression cost is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage and suppression cost is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

(3) If the property damage and suppression cost is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony.

(c) This section shall not prevent an action for the damages sustained by the owner of any property from such fires. For the purposes of this section, the term "woodland" is to be taken to include all forest areas, both timber and cutover land, and all

second-growth stands on areas that have at one time been cultivated. Any person who shall furnish to the State, evidence sufficient for the conviction of a violation of this section shall receive the sum of five hundred dollars ($500.00) to be paid from the State Fire Suppression Fund."

Section 13. G.S. 90-21.20 reads as rewritten:

"**§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.**

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies. The reporting requirement under this subsection is waived if the patient was treated earlier for the wound, injury, or illness at another hospital, sanitarium, or other medical institution or facility that is subject to the reporting requirements of this subsection.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, every case in which a patient has burns over approximately ten percent (10%) or more of the patient's body if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or

surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report."

Section 14. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 760
Proposed Committee Substitute H760-PCS1207-LH

Short Title: Amend Arson Laws. (Public)

Sponsors:

Referred to:

March 31, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR CERTAIN ARSON OFFENSES.

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(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.

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If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any church, chapel, or meetinghouse, the person shall be punished as a ~~Class E~~ Class C felon."

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"**§ 14-63. Burning of boats and barges.**

(a) If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any boat, barge, ferry or float, without the consent of the owner thereof, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.

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(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony.

(b) In the event the consent of the owner is given for an unlawful or fraudulent purpose, however, the penalty provisions of this section shall remain in full force and effect."

Section 9. G.S. 14-65 reads as rewritten:

"**§ 14-65. Fraudulently setting fire to dwelling houses.**

If any person, being the occupant of any building used as a dwelling house, whether such person be the owner thereof or not, or, being the owner of any building designed or intended as a dwelling house, shall wantonly and willfully or for a fraudulent purpose set fire to or burn or cause to be burned, or aid, counsel or procure the burning of such building, he shall be punished as ~~a Class H felon.~~ follows:

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Section 10. G.S. 14-66 reads as rewritten:

"**§ 14-66. Burning of personal property.**

If any person shall wantonly and willfully set fire to or burn, or cause to be burned, or aid, counsel or procure the burning of, any goods, wares, merchandise or other chattels or personal property of any kind, whether or not the same shall at the time be insured by any person or corporation against loss or damage by fire, with intent to injure or prejudice the insurer, the creditor or the person owning the property, or any other person, whether the property is that of such person or another, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.
(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.
(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 11. G.S. 14-67.1 reads as rewritten:

"**§ 14-67.1. Burning other buildings.**

If any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of any building or other structure of any type not otherwise covered by the provisions of this Article, he shall be punished as ~~a Class H felon.~~ follows:

(1) If the property damage is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.
(2) If the property damage is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.
(3) If the property damage is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony."

Section 12. G.S. 14-136 reads as rewritten:

"**§ 14-136. Setting fire to grass and brushlands and woodlands.**

(a) ~~If~~ Except as provided by subsection (b) of this section, if any person shall intentionally set fire to any grassland, brushland or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and without also taking care to watch such fire while burning and to extinguish it before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a Class 2 misdemeanor for the first offense, and for a second or any subsequent similar offense shall be guilty of a Class 1 misdemeanor. ~~If intent to damage the property of another shall be shown, said person shall be punished as a Class I felon.~~

(b) If it is shown that a person who violates subsection (a) of this section had the intent to damage the property of another, then the person shall be punished as follows:

(1) If the property damage and suppression cost is twenty-five thousand dollars ($25,000) or less, then the offense is a Class H felony.
(2) If the property damage and suppression cost is one hundred thousand dollars ($100,000) or less, but more than twenty-five thousand dollars ($25,000), then the offense is a Class E felony.
(3) If the property damage and suppression cost is more than one hundred thousand dollars ($100,000), then the offense is a Class C felony.

(c) This section shall not prevent an action for the damages sustained by the owner of any property from such fires. For the purposes of this section, the term "woodland" is to be taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated. Any person who shall furnish to the State, evidence sufficient for the conviction of a violation of this section shall receive the sum of five hundred dollars ($500.00) to be paid from the State Fire Suppression Fund."

Section 13. G.S. 90-21.20 reads as rewritten:

"**§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.**

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies. The reporting requirement under this subsection is waived if the patient was treated earlier for the wound, injury, or illness at another hospital, sanitarium, or other medical institution or facility that is subject to the reporting requirements of this subsection.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, every case in which a patient has burns over approximately ten percent (10%) or more of the patient's body if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report."

Section 14. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 760:
Amend Certain Arson Laws
Proposed Committee Substitute

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: April 15, 1999
Version: 2

Introduced by: Representative Sherrill
Summary by: Steven Rose
Committee Counsel

The proposed committee substitute for House Bill 760 increases the criminal penalties for certain arson offenses. It also changes the reporting requirements for wounds caused by criminal acts to eliminate duplication of reporting and to require reporting of burn cases.

House Bill 760 increases the criminal penalties for the following arson offenses:

STATUTE	OFFENSE	EXISTING PENALTY	NEW PENALTY
G.S. 14-58	Common law arson-dwelling unoccupied	Class G felony	Class C felony
G.S. 14-58	Common law arson-occupied dwelling	Class D felony	Class B2 felony
G.S. 14-59	Public buildings	Class F felony	Class C felony
G.S. 14-60	Schools	Class F felony	Class C felony
G.S. 14-61	Bridges, fire or rescue squad buildings, houses owned and used by businesses	Class F felony	Class C felony
G.S. 14-62	Uninhabited house, barns, other business buildings	Class F felony	$25,000 or less, Class H felony; $100,000 or less, Class E felony; over $100,000, Class C felony
G.S. 14-62.1	Dwelling or business building under construction	Class H felony	$25,000 or less, Class H felony; $100,000 or less, Class E felony; over $100,000, Class C felony
G.S. 14-62.2	Churches and other religious buildings	Class E felony	Class C felony
G.S. 14-63	Boats and other watercraft	Class H felony	$25,000 or less, Class H felony; $100,000 or less, Class E felony; over

PROFESSIONAL FIRE FIGHTERS and PARAMEDICS OF N C

David R. Anders
President

Richard L. O'Brien
Secretary/Treasurer

April 9, 1999

The Honorable Wilma Sherrill
NC House of Representatives
Room 2215, Legislative Office Building
Raleigh, NC 27601-2808

Representative Sherrill:

Thank you for sponsoring House Bill 760 to increase the criminal penalties for certain arson offenses. I am convinced that this bill would help professional fire fighters across the state.

As you know, firefighting is one of the most dangerous occupations in terms of injury. According to a recent survey from the U.S. Bureau of Labor Statistics, more than 40 percent of all fire fighters suffered a job-related injury in 1997, far exceeding the rate of injury for any other occupation. In North Carolina, for example, workers' comp. rates are nearly five times the rates for law enforcement. These are based on the frequency and extent of the injuries. There is no doubt that the fires in the structures where many of these injuries occurred were the result of arson.

If our organization can be of help to you with this effort to change the sad fire fighter injury statistics in our state, feel free to call on me.

Sincerely,

David R. Anders
President

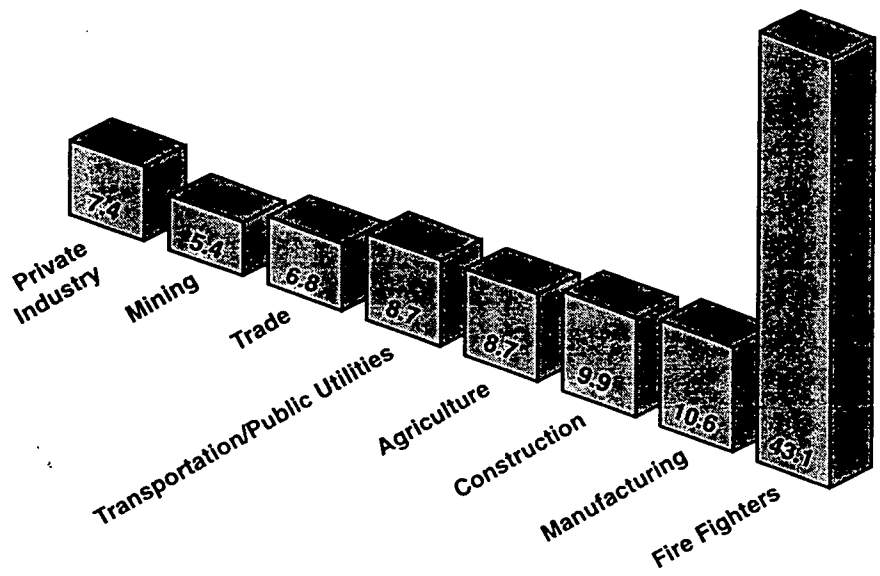
Enclosures

18-D Regent Park Blvd., Asheville, NC 28806 • Phone (828) 236-1921 • Fax (828) 236-1924

Fire Fighter Injuries

More than 40 percent of all fire fighters suffered a job-related injury in 1997, far exceeding the rate of injury for any other occupation. They were nearly six times more likely to suffer injuries on the job than average private-sector workers.

Number of Job Related Injuries/Illnesses per 100 Workers



Source: Survey of Occupational Injuries and Illnesses, 1996; USDL Summary 98-1, U.S. Bureau of Labor Statistics; and IAFF 1997 Death and Injury Survey

Fire Fighting is Dangerous

North Carolina Insurance Rating Bureau
(1998 Worker's Compensation Assigned Risk Rates)

1.	Clerical Worker	=	$ 0.32 per $100 of payroll
2.	Teacher	=	$ 0.71 per $100 of payroll
3.	Police	=	$ 3.13 per $100 of payroll
4.	Fire Fighter	=	$ 17.02 per $100 of payroll

NOTE: Worker's Compensation Rates indicate frequency and extent of injuries. Rates for fire fighters are FIVE times higher than for police.

Harley Shuford
President

Timothy R. Jonas
1st Vice President

Jerry Webster
2nd Vice President



Nancy Johnson
Secretary

Alan Mayfiefd
Treasurer

Mack Salley
Membership Director

March 19, 1999

Representative Wilma M. Sherrill
602 legislative Office Building
Raleigh, NC 27601

Dear Representative Sherill,

It has been a pleasure working with you in an attempt to amend some of the sentencing guidelines that deal with the arson statues. As you are aware, this should be a deterrent for those who choose to use fire in illegal ways. This is something that has been needed for a long time to help protect the citizens of North Carolina.

Speaking for the 600+ members of the North Carolina Chapter of the International Association of Arson Investigators, we give you our full support and thanks. Our chapter is comprised of firefighters, law enforcement, and insurance representatives. Everyone I have spoken with is supporting you 100%.

Thank you for all you have done and if you need further assistance don't hesitate to contact me.

Sincerely,

Harley Shuford,
Chapter President

APR 12 1999

HAFER, MCNAMARA, CALDWELL, CUTLER & CURTNER, P.A.

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April 8, 1999

Representative Wilma Sherrill
North Carolina General Assembly
Room 602, Legislative Office Building
Raleigh, North Carolina 27601-1096

RE: House Bill 760, Amend Arson Laws

Dear Representative Sherrill:

On behalf of the **North Carolina College of Emergency Physicians**, we are writing to express our appreciation and support for House Bill 760, Amend Arson Laws. NCCEP appreciates your concern for arson victims in this State and your efforts to make it more difficult for arsonists to elude arrest.

We appreciate your willingness to discuss changes to the bill to address concerns of emergency department physicians across the State. We feel that with the changes you have agreed to make, the bill will focus its attention on apprehending arsonists and can be supported by all interested parties.

Again, thank you for the opportunity to speak with you regarding this legislation and for your efforts to make North Carolina safer for all of her citizens. Please let us know if we can be of assistance in the future.

Sincerely,

HAFER, McNAMARA, CALDWELL
CUTLER & CURTNER, P.A.

Eddie Caldwell

Edmond W. Caldwell, Jr.

David P. Ferrell

David P. Ferrell

/md

cc: Steve Williamson, MD, FACEP, NCCEP President
Greg Mears, MD, FACEP, NCCEP President Elect
Marsha Ford, MD, FACEP, NCCEP Legislative Committee Chair
Holly Marquardt, NCCEP Executive Director

TOWN OF BLACK MOUNTAIN
Office Of The Fire Chief
106 Montreat Road
Black Mountain NC, 28711
CELEBRATING 80 YEARS!
1919 - 1999
Emergency (828) 669-8075 Office (828) 669-8074 Fax (828) 669-8143

Representative Wilma M. Sherrill
51st District
North Carolina House of Representatives
602 Legislative Office Building
Raleigh NC, 27601

Dear Representative Sherrill,

I want to express my appreciation for your support of the proposed Amended Arson Law Bill. As you may be aware, Buncombe County, through training and experience, but most importantly, through the efforts of District Attorney Ron Moore and his staff, has been successful in prosecuting many cases. In the past arson has always been a crime that most prosecutors were reluctant to tackle. I have had many opportunities in the course of my tenure as Fire Chief, law enforcement officer and as an arson investigator to be a part of this success. One of my motivations that has always been the hope that I could see one more individual who intends harm to the community, end up behind bars. Unfortunately the sentencing of many of these individuals has resulted in much less active time than many in my position feel was warranted. The ability to apply a more severe penalty seems fitting when I consider the devastation to lives and property that accompanies these crimes. In addition, few members of the community realize the huge amount of time, energy, and expense involved in investigating and prosecuting an arson case. With this much of the taxpayer's money invested in these cases, it is often frustrating to see all of the work done by firefighters be rewarded by a reduced sentence or probation. This law, in my opinion, has been needed for a very long time. Perhaps by enacting this legislation, we can send a message that the crime of arson is a serious offense, requiring equal punishment. I am sure that firefighters statewide would rejoice at the Amended Arson Law becoming a new tool to fight this crime.

Again thank you for supporting this legislation and the help you have provided to the Public Safety of our community.

Sincerely,

Gary D. Bartlett, Chief

Macon County

March 22, 1999

Representative Wilma Sherrill
Post Office Box 18561
Asheville, NC 28814

Dear Ms Sherrill,

As Vice Chairman of the Macon County Fire Commission I represent 11 Fire Departments in our county. I have given copies of the bill to amend the arson laws and have received word from all our fire chiefs and fire fighters that they are in full support of these changes. As with any fire it is tragic but it is especially terrifying when you have to tell the victims that their homes were intentionally set on fire. Arson that takes away the memories of their loved ones, keepsakes left behind by loved ones passed on, and pictures never to be recovered. No longer should arson be looked at as a passive crime but that of violent crime.

Sincerely,

Donald L. Willis Jr
Macon County Fire Marshal

Homer Holbrooks
Sheriff

Macon County Sheriff's Department
Macon County Courthouse
5 West Main Street • Franklin, NC 28734
704-521-2811 or 704 524 6421

REPRESENTATIVE WILMA M. SHERRILL
N.C. HOUSE OF REPRESENTATIVES
602 LEGISLATIVE OFFICE BUILDING
RALEIGH, N.C. 27601

RE: AMENDMENT OF ARSON LAWS

HONORABLE REP. WILMA M. SHERRILL:

THIS LETTER IS IN REFERENCE TO THE BILL ENTITLED " AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR CERTAIN ARSON OFFENSES".

IN OCTOBER 1998, MACON COUNTY HAD SEVEN HOMES DESTROYED BY ARSON IN A WEEK. A GROUP OF YOUNG MEN WERE CHARGED AND PROSECUTED FOR THESE CRIMES. THE DEVASTATION THAT ARSON INFLICTS ON IT'S VICTIMS IS INDESCRIBABLE. DURING THE COURT PROCEEDINGS THIS DEVASTATION WAS DESCRIBED VERY VIVIDLY BY THE VICTIMS. WE WERE VERY FORTUNATE THAT NO LIVES WERE LOST IN ANY OF THESE FIRES.

PROPERTY CRIMES HAVE NEVER BEEN CRIMES THAT HAVE BEEN PUNISHABLE BY ANY EXTENDED PRISON TIME. WHEN SOMEONE BREAKS INTO YOUR HOME AND STEALS A TV AND VCR; THESE ITEMS CAN BE REPLACED. ARSON IS A CRIME THAT TAKES EVERYTHING REPLACEABLE AND NON-REPLACEABLE AWAY. ARSON IS THE MURDERED OF PEOPLES MEMORIES.

WE WANT IT TO BE KNOWN THE MACON COUNTY SHERIFFS OFFICE IS REQUESTING THAT THIS BILL BE ENACTED. WE MUST ATTEMPT TO DETER PEOPLE FROM THIS DEVASTATING ACT OF VIOLENCE.

SINCERELY,

Homer V. Holbrooks

HOMER V. HOLBROOKS
SHERIFF

Investigative Resources Global, Inc.

March 19, 1999

TO WHOM IT MAY CONCERN:

I write in support of the proposed legislation requiring the reporting of burn injuries to law enforcement agencies and the revision of the sentencing classifications for all arson and unlawful burning offenses in North Carolina.

I have twenty-two years of experience as a Fire Investigator in North Carolina, the first fifteen of which were as a government investigator.

I have investigated several fire incidents in which the firesetter was burned and subsequently went to a hospital for treatment; however, the medical staff did not feel that they were in a position to report their observations because of a lack of statutory authority. I encourage you strongly to pass legislation directing medical professionals to report the occurrence of burn injuries to the appropriate local law enforcement agency.

During my years as a government investigator, I was involved in the prosecution of more than 400 arson and unlawful burning offenses. All of these prosecutions occurred during the timeframe during which the "Fair Sentencing Act" was in effect and most of these offenses were punishable as Class C (50 year maximum - 15 year presumptive) through II (10 year maximum - 3 year presumptive) felonies. While defendants did not serve anything close to the presumptive sentence during those years, other legislation has since corrected that deficiency. I urge you strongly to restore sentencing guidelines to the levels that were present during the life of the "Fair Sentencing Act." The legislature needs to send a message to the firesetters in North Carolina that such senseless and violent acts will be adjudicated in such a manner to prevent the offender from ever committing such an act again. The "grapevine" among the criminal element of our state is such that when the offenders of this state learn the length of sentences being handed out for arson and unlawful burning offenses, they will view the sentences as a reason not to commit the felonies.

Sincerely,

Hunter B. (Terry) Lacy
Fire Investigations Manager

7621 Little Ave., Suite 426 • Charlotte, NC 28226
704/341-0101 • 800/694-2313 • FAX 704/341-0109
Internet: www.irg-sit.com

November 16,1998.

Fire Marshall Don Willis
104 E. Main St.
Franklin, N.C. 28734
Attention: To Whom It May Concern.

Dear Mr. Willis;

We read in The Highlander newspaper 10-16-98, about the sentencing of Nicholas Kereipp.

We are perplexed by the lenient sentence, considering the seriousness of the crimes- Arson, Burglary, Breaking and Entering and the total loss of property involved.

The burning of our home has destroyed more than just a home. It was the total loss of three generations of memories and personel treasures. There is no compensation to replace all of that. Not even with insurance.

The perpatrators actions have caused us a tangle of negotiations with the Insurance Company that is yet to be resolved. Now over a year of personel aggrevation. There is no compensation for this, because this is the insurance.

These are evil minded men who have destroyed our property and assaulted our hearts and our minds. They deserve more than just probation.

The local government, the court and the state need to take a serious look at sentencing laws and stiffer peneltics for crimes commited by evil people. The changes need to be made now- not after it happens again.

Sincerely,

M/M Ralph C. Brown

4022 NORTHLAKE CREEK COURT • TUCKER, GEORGIA 30084

November 16. 1998

Being a victim of the violent crime of arson, and seeing first-hand the devastation arsonists cause, seeing and feeling what victims of this senseless crime go through, the losses they endure, emotionally and financially, and then seeing the short amount of time arsonists may have to spend in prison, I felt a need to write trying to seek stronger penalties imposed upon arsonists in North Carolina.

My family home was burned to the ground in October of 1997 by arsonists. We have spent over a year trying to cope with the anguish of losing our home. We'll be enduring this loss for the rest of our lives. To sit in a courtroom, reliving the horror and heartache of losing our home, and to see an arsonist sentenced to only 18 months in a county jail, makes me more than a little angry.

Losing your home, a home filled with a lifetime of history, a lifetime of hard work and love that's put into your home, is extremely painful and traumatic. No lives were lost when our home was burned, but our lives were devastated and will never be the same.

Arsonists have absolutely no respect for the rights of others. They have no concern for what they destroyed, nor the mental anguish they have caused the family. They have no regard for what they robbed their victims of, no regard for the sanctity that a home represents. A sentence of 18 months is ludicrous, considering what they have taken from their victims and the emotional distress they have caused us.

Please help arson victims to feel some measure of atonement for the losses we have suffered by increasing the penalties for this tragic crime, and making them more stringent.

Thank you.

Judy S Blizard

Judy S Blizard

122 Outland Ave.
Brevard, NC 28712

VICTIM IMPACT STATEMENT

YOUR HONOR,

DURING THE PAST YEAR AND A HALF OUR FAMILY HAS SUFFERED GREAT TRAUMA AS A RESULT OF THE CRIMES COMMITTED BY DONIA RICE. THE LIVES OF THREE FAMILIES HAVE BEEN DRAMATICALLY INTERRUPTED AND CHANGED FOREVER.

WHAT MY HUSBAND AND I HAD WORKED FOR DURING THE PAST 33 YEARS WAS TAKEN AWAY FROM US IN A MATTER OF MINUTES BY THIS PERSON WHO HAS NO REGARD OR RESPECT FOR ANYONE, REGARDLESS OF AGE. THIS ACT OF VIOLENCE WAS DIRECTED AT OUR FAMILIES WITH NO RESPECT FOR LIFE. OUR LOSS WAS A LIFETIME OF WORK, MEMORIES OF THE PAST, AND SENTIMENTAL ITEMS THAT WE CHERISHED FROM THOSE THAT HAVE PASSED AWAY THAT CAN NEVER BE REPLACED.

THE SECOND VICTIM OF THIS HORRENDOUS CRIME IS A FRAGILE 84 YEAR OLD WOMAN WHO HAS NEVER HARMED ANYONE IN ANY WAY IN ALL HER LIFE, YET THIS PERSON COMMITTED THIS ACT OF VIOLENCE TO SUCH A DEGREE AS TO DESTROY HER PEACE AND SERENITY. THAT PEACE AND SERENITY HAS BEEN REPLACED WITH FEAR AND ANXIETY, WHICH SHOULD NOT BE IN THIS 84 YEAR OLD LADY'S LIFE. THIS SHOULD BE THE JOY OF HER GOLDEN YEARS, NOT THE FEAR AND ANXIETY SHE FACES EACH DAY.

AFTER THE BURNING OF OUR HOME, WE WERE CONCERNED FOR OUR MOTHER AND ADVISED HER TO LEAVE HER HOME AND GO TO A SAFE PLACE BECAUSE WE FEARED FOR HER LIFE.

TO WAKE UP THE NEXT MORNING IN A DIFFERENT HOUSE AND DIFFERENT BED, KNOWING YOU HAVE NOTHING.....NO CLOTHES, PERSONAL ITEMS, AUTOMOBILES, SMALL THINGS WE TAKE FOR GRANTED UNTIL YOU LOSE THEM, NOT EVEN A TOOTHBRUSH TO BRUSH YOUR TEETH, A COMB TO COMB YOUR HAIR, NOTHING.....ALL TAKEN BY AN ACT OF VIOLENCE.

AFTER THIS PERSON BURNED OUR HOME AND THE HOME OF LILAC REDONE AND WAS ARRESTED AND CHARGED FOR ARSON, SHE CONTINUED TO HARASS ME AND MY FAMILY BY WRITING LETTERS AND CALLING THE PLACE WE WERE STAYING WHILE SHE WAS INCARCERATED.

IN OUR EXPERIENCE ARSON IS EVERY BIT AS SERIOUS AS HOMICIDE [redacted] ACTS ARE THE ULTIMATE IN LOSS. ARSON NOT ONLY TAKES A LIFE, AND ALSO TAKES AWAY THE FUTURE. EVERYTHING A PERSON HOPES AND STRIVES FOR. AN ARSON TAKES AWAY THE PAST. EVERYTHING A PERSON HAS WORKED FOR, STRIVED FOR, DREAMED AND PLANNED FOR IN AS LITTLE AS AN HOUR, A LIFETIME OF WORK AND DREAMS, OF SWEAT AND TEARS ARE WIPED OUT IN A MOST VIOLENT MANNER. FIRE DOES NOT RESPECT WORK OR DREAMS, OR HUMAN LIFE AND NEITHER DOES AN ARSONIST, AN ARSONIST HAS SUPREME DISREGARD FOR THE SANCTIFY OF HUMAN LIFE AND DIGNITY.

PROBATION DOES NOT SEEM TO BE A DETERRENT FOR THIS PERSON, SINCE DONIA RICE WAS ON PROBATION FOR OTHER FELONY CHARGES WHEN SHE COMMITTED THESE ACTS OF VIOLENCE AGAINST OUR FAMILY.

THE ONLY HOPE I HAVE FOR ME AND MY FAMILY TO HAVE ANY PEACE AND BE ABLE TO CONTINUE WITH OUR LIVES IS TO KNOW THAT DONIA RICE IS INCARCERATED AND UNABLE TO HARM US AGAIN. WE ARE PLEADING WITH THE COURT TO SENTENCE DONIA RICE TO THE MAXIMUM SENTENCE POSSIBLE WITHOUT PROBATION FOR THESE ACTS OF VIOLENCE AND THAT THEY BE ORDERED TO RUN CONSECUTIVELY WITH ONE ANOTHER.

THANK YOU FOR ALLOWING ME TO SPEAK BEFORE THIS COURT.

WRITTEN AND PRESENTED BY MRS. CAROLYN REDMON JUNE 6, 1997

FELONY CLASSIFICATION
UNDER THE STRUCTURED SENTENCING ACT
Offenses committed on or after December 1, 1997

FELONY CLASS	GENERAL STATUTES SECTION	OFFENSE
A	G.S. 14-17	Murder in the 1st degree.
B1	G.S. 14-27.2	1st degree rape.
B1	G.S. 14-27.4	1st degree sexual offense.
B1	G.S. 14-27.7A(a)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is at least six years older than victim).
B2	G.S. 14-17	Murder in the 2nd degree.
C	G.S. 14-7.6	Sentencing of habitual felons.
C	G.S. 14-27.3	2nd degree rape.
C	G.S. 14-27.5	2nd degree sexual offense.
C	G.S. 14-27.7A(b)	Statutory rape or sexual offense of person who is 13, 14, or 15 years old (defendant is more than four but less than six years older than victim).
C	G.S. 14-28	Malicious castration.
C	G.S. 14-30	Malicious maiming.
C	G.S. 14-32(a)	Assault with deadly weapon with intent to kill inflicting serious injury.
C	G.S. 14-32.2(b)(1)	Patient abuse and neglect, intentional conduct proximately causes death.
C	G.S. 14-34.4(a)	Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death.
C	G.S. 14-34.4(b)	Adulterated or misbranded food, drugs, etc.; intent to extort.
C	G.S. 14-39	Kidnapping in the 1st degree.
C	G.S. 14-74	Larceny by servants and other employees (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-90	Embezzlement of property received by virtue of office or employment (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-91	Embezzlement of State property by public officers and employees (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-92	Embezzlement of funds by public officers and trustees (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-93	Embezzlement by treasurers of charitable and religious organizations (amount involved $100,000 or more). *(Effective 12/1/97)*

Felony Classification Continued

C	G.S. 14-94	Embezzlement by officers of railroad companies (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-97	Appropriation of partnership funds by partner to personal use (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-98	Embezzlement by surviving partner (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-99	Embezzlement of taxes by officers (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-100	Obtaining property by false pretenses (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 14-159.1	Contaminating a public water system.
C	G.S. 14-401.11(b)(3)	Distribution of certain food at Halloween and all other times prohibited (poisonous chemical/foreign substance).
C	G.S. 53-129	Misapplication, embezzlement of funds, etc. (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 58-2-162	Embezzlement by insurance agents, brokers, or administrators (amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 90-95(h)(4)c	Trafficking in opium or heroin (28 grams or more).
C	G.S. 90-95.1	Continuing criminal enterprise.
C	G.S. 90-210.70(a)	Penalties (Funeral and Burial Trust Funds; amount involved $100,000 or more). *(Effective 12/1/97)*
C	G.S. 130A-26.1(i)(1)	Criminal Violation of Article 9 (Hazardous waste).
C	G.S. 143-215.6B(h)(1)	Enforcement procedures: criminal penalties (Water and air resources).
C	G.S. 143-215.88B(f)(1)	Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control).
C	G.S. 143-215.94X(c)(1)	Enforcement procedures: criminal penalties (Hazardous substances).
C	G.S. 143-215.104Q(c)	Enforcement procedures; criminal penalties (dry-cleaning solvents; knowing and willful violation, place person in danger of death/serious bodily injury). *(Effective 1/1/98)*
C	G.S. 143-215.114B(h)(1)	Enforcement procedures: criminal penalties (Air pollution control).
D	G.S. 14-18	Voluntary manslaughter. *(was Class E - Effective 12/1/97)*
D	G.S. 14-49(a)	Malicious use of explosive or incendiary.
D	G.S. 14-49.1	Malicious damage of occupied property by use of explosive or incendiary.
D	G.S. 14-51	Burglary in the 1st degree.
D	G.S. 14-53	Breaking out of dwelling house burglary.
D	G.S. 14-57	Burglary with explosives.

Felony Classification Continued

D	G.S. 14-58	Arson in the 1st degree.
D	G.S. 14-58.2	Burning of mobile home, manufactured-type house or recreational trailer home.
D	G.S. 14-87	Robbery with firearms or other dangerous weapons.
D	G.S. 14-88	Train robbery.
D	G.S. 14-190.16	1st degree sexual exploitation of a minor.
D	G.S. 14-190.18	Promoting prostitution of a minor.
D	G.S. 90-95(e)(5)	Selling or delivering a controlled substance by a person 18 or over to a person under 16 or a pregnant female. *(was Class E - Effective 1/1/97)*
D	G.S. 90-95(h)(1)d	Trafficking in marijuana (10,000 pounds or more).
D	G.S. 90-95(h)(2)c	Trafficking in methaqualone (10,000 or more dosage units).
D	G.S. 90-95(h)(3)c	Trafficking in cocaine (400 grams or more).
D	G.S. 90-95(h)(3a)c	Trafficking in amphetamine (10,000 or more dosage units).
D	G.S. 90-95(h)(3b)c	Trafficking in methamphetamine (400 grams or more).
D	G.S. 90-95(h)(4a)c	Trafficking in Lysergic Acid Diethylamide (1,000 or more dosage units).
E	G.S. 14-27.7	Intercourse and sexual offense with certain victims (Parent, Custodian).
E	G.S. 14-29	Castration or other maiming without malice aforethought.
E	G.S. 14-30.1	Malicious throwing of corrosive acid or alkali.
E	G.S. 14-31	Maliciously assaulting in a secret manner.
E	G.S. 14-32(b)	Assault with deadly weapon inflicting serious injury.
E	G.S. 14-32(c)	Assault with deadly weapon with intent to kill.
E	G.S. 14-32.2(b)(2)	Patient abuse and neglect, culpably negligent conduct proximately causes death.
E	G.S. 14-34.1	Discharging certain barreled weapons or a firearm into occupied property.
E	G.S. 14-34.5	Assault with a firearm on a law enforcement officer.
E	G.S. 14-39	Kidnapping in the 2nd degree.
E	G.S. 14-49(b1)	Malicious use of explosive or incendiary. *(Effective 6/21/96)*
E	G.S. 14-62.2	Burning of churches and certain other religious buildings. *(Effective 6/21/96)*
E	G.S. 14-318.4(a)	Child abuse inflicting serious injury.
E	G.S. 14-318.4(a1)	Child abuse - prostitution.
E	G.S. 14-318.4(a2)	Child abuse - sexual act.

Felony Classification Continued

E	G.S. 90-95(e)(8)	Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of an elementary or secondary school.
E	G.S. 90-95(h)(4)b	Trafficking in opium or heroin (14 grams or more, less than 28 grams).
F	G.S. 14-8	Rebellion against the state.
F	G.S. 14-16.6(b)	Assault with a deadly weapon on executive or legislative officer.
F	G.S. 14-16.6(c)	Assault inflicting serious bodily injury on executive or legislative officer.
F	G.S. 14-18	Involuntary manslaughter.
F	G.S. 14-32.1(e)	Aggravated assault/assault and battery on handicapped person.
F	G.S. 14-32.2(b)(3)	Patient abuse and neglect, conduct proximately causes serious bodily injury.
F	G.S. 14-32.3(a)	Domestic abuse, neglect, and exploitation of disabled or elder adults (abuse results in serious injury).
F	G.S. 14-32.4	Assault inflicting serious bodily injury. *(Effective 1/1/97)*
F	G.S. 14-34.2	Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.
F	G.S. 14-34.6(c)	Assault or affray with a firearm on an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.
F	G.S. 14-34.7	Assault on a law enforcement officer.
F	G.S. 14-41	Abduction of children.
F	G.S. 14-43.2	Involuntary servitude.
F	G.S. 14-43.3	Felonious restraint.
F	G.S. 14-59	Burning of certain public buildings.
F	G.S. 14-60	Burning of schoolhouses or buildings of educational institutions.
F	G.S. 14-61	Burning of certain bridges and buildings.
F	G.S. 14-62	Burning of certain buildings.
F	G.S. 14-91	Embezzlement of state property by public officers and employees (amount involved less than $100,000 - *Effective 12/1/97*).
F	G.S. 14-92	Embezzlement of funds by public officers and trustees (amount involved less than $100,000 - *Effective 12/1/97*).
F	G.S. 14-99	Embezzlement of taxes by officers (amount involved less than $100,000 - *Effective 12/1/97*).
F	G.S. 14-118.4	Extortion.
F	G.S. 14-178	Incest between certain near relatives.

Felony Classification Continued

F	G.S. 14-190.17	2nd degree sexual exploitation of a minor.
F	G.S. 14-190.19	Participating in prostitution of a minor.
F	G.S. 14-202.1	Taking indecent liberties with children.
F	G.S. 14-208.11	Failure to register - Sex Offender Registration Program. *(was Class I - Effective 4/1/98)*
F	G.S. 14-209	Perjury.
F	G.S. 14-217(a)	Bribery of officials.
F	G.S. 14-218	Offering bribes.
F	G.S. 14-220	Bribery of jurors.
F	G.S. 14-221	Breaking or entering jails with intent to injure prisoners.
F	G.S. 14-258	Conveying messages and weapons to or trading with convicts and other prisoners resulting in murder, assault or escape.
F	G.S. 14-258.2	Possession of dangerous weapon in prison resulting in bodily injury or escape.
F	G.S. 14-258.3	Taking of hostage, etc., by prisoner.
F	G.S. 14-284.2	Dumping of toxic substances.
F	G.S. 14-288.2(e)	Inciting to riot (property damage greater than $1500 or serious bodily injury).
F	G.S. 14-288.8	Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction.
F	G.S. 14-288.9	Assault on emergency personnel with a dangerous weapon or substance.
F	G.S. 14-329(b)	Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages.
F	G.S. 14-401.11(b)(2)	Distribution of certain food at Halloween and all other times prohibited (any controlled substance).
F	G.S. 20-138.5(b)	Habitual impaired driving. *(was Class G - Effective 12/1/97)*
F	G.S. 63-28	Infliction of serious bodily injury by operation of an aircraft while impaired.
F	G.S. 75A-18(d)(2)	Penalties (Boat Safety Act).
F	G.S. 75D-7	False testimony as to any material fact by any person examined under the Racketeer Influenced and Corrupt Organizations Chapter.
F	G.S. 76-40(a1)(2)	Discharging medical waste in Atlantic Ocean or waters of state, creating substantial risk of injury.
F	G.S. 90-95(h)(1)c	Trafficking in marijuana (2,000 pounds or more, less than 10,000 pounds).

Felony Classification Continued

F	G.S. 90-95(h)(2)b	Trafficking in methaqualone (5,000 or more dosage units, less than 10,000).
F	G.S. 90-95(h)(3)b	Trafficking in cocaine (200 grams or more, less than 400 grams).
F	G.S. 90-95(h)(3a)b	Trafficking in amphetamine (5,000 or more dosage units, less than 10,000).
F	G.S. 90-95(h)(3b)b	Trafficking in methamphetamine (200 grams or more, less than 400 grams).
F	G.S. 90-95(h)(4)a	Trafficking in opium or heroin (4 grams or more, less than 14 grams).
F	G.S. 90-95(h)(4a)b	Trafficking in Lysergic Acid Diethylamide (500 or more dosage units, less than 1,000 dosage units).
F	G.S. 120-86	Bribing of legislators.
F	G.S. 143-63	Financial interest of officers in sources of supply; acceptance of bribes (Secretary of Administration, assistant, or A.B.C. member).
F	G.S. 143-214.2A(c)(2)	Discharging medical waste in Atlantic Ocean or waters of state, creating substantial risk of injury.
G	G.S. 14-32.3(b)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
G	G.S. 14-49(b)	Malicious use of explosive or incendiary.
G	G.S. 14-51	Burglary in the 2nd degree.
G	G.S. 14-58	Arson in the 2nd degree.
G	G.S. 14-87.1	Common law robbery.
G	G.S. 14-113.5	Making, distributing, possessing, transferring, or programming device for theft of telecommunication service (5 or more devices).
G	G.S. 14-401.16(a)	Contaminate food or drink to render one mentally incapacitated or physically helpless with the intent to commit second degree rape or second degree sexual offense. *(Effective 12/1/97)*
G	G.S. 14-401.16(b)	Contaminate food or drink to render one mentally incapacitated or physically helpless with the intent to commit second degree rape or second degree sexual offense (manufacturing a controlled substance for the purpose of violating this section). *(Effective 12/1/97)*
G	G.S. 14-415.1	Possession of firearms, etc., by felon prohibited.
G	G.S. 14-454(a)	Accessing computers.
G	G.S. 14-455	Damaging computers, computer systems, computer networks, and resources.
G	G.S. 15A-287(e)	Interception and disclosure of wire, oral, or electronic communications prohibited.
G	G.S. 20-141.4	Felony death by vehicle (causing death by impaired driving).
G	G.S. 90-95(b)(1)	Sale of Schedule I or II Controlled Substance. *(was Class H - Effective 12/1/97)*
G	G.S. 90-95(h)(1)b	Trafficking in marijuana (50 pounds or more, less than 2,000 pounds).

Felony Classification Continued

G	G.S. 90-95(h)(2)a	Trafficking in methaqualone (1,000 or more dosage units, less than 5,000).
G	G.S. 90-95(h)(3)a	Trafficking in cocaine (28 grams or more, less than 200 grams).
G	G.S. 90-95(h)(3a)a	Trafficking in amphetamine (1,000 or more dosage units, less than 5,000).
G	G.S. 90-95(h)(3b)a	Trafficking in methamphetamine (28 grams or more, less than 200 grams).
G	G.S. 90-95(h)(4a)a	Trafficking in Lysergic Acid Diethylamide (100 or more dosage units, less than 500 dosage units).
H	G.S. 14-3(b)	Unclassified misdemeanor which is infamous, done in secrecy and malice, or with deceit and intent to defraud.
H	G.S. 14-7.20	Continuing criminal enterprise.
H	G.S. 14-11	Activities aimed at overthrow of government; Use of public buildings (second offense).
H	G.S. 14-12.1	Certain subversive activities made unlawful.
H	G.S. 14-32.3(a)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
H	G.S. 14-32.3(c)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
H	G.S. 14-33.2	Habitual misdemeanor assault.
H	G.S. 14-44	Using drugs or instruments to destroy unborn child.
H	G.S. 14-54	Breaking or entering buildings.
H	G.S. 14-62.1	Burning of building or structure in process of construction.
H	G.S. 14-63	Burning of boats and barges.
H	G.S. 14-64	Burning of ginhouses and tobacco houses.
H	G.S. 14-65	Fraudulently setting fire to dwelling houses.
H	G.S. 14-66	Burning of personal property.
H	G.S. 14-67.1	Burning other buildings.
H	G.S. 14-69.1	Making a false report concerning destructive device. *(was Class 1 misdemeanor - Effective 12/1/97)*
H	G.S. 14-69.2	Perpetrating hoax by use of false bomb or other device. *(was Class 1 misdemeanor - Effective 12/1/97)*
H	G.S. 14-71.1	Possessing stolen goods.
H	G.S. 14-72	Larceny of property worth more than $1,000.
H	G.S. 14-72	Receiving stolen goods (G.S. 14-71) or possessing stolen goods (G.S. 14-71.1) worth more than $1,000.
H	G.S. 14-72(b)(1)	Larceny from the person; receiving or possessing stolen goods from the person.

H	G.S. 14-72(b)(2)	Larceny pursuant to burglary, breaking or entering, or burglary with explosives; receiving or possessing stolen goods pursuant to these offenses.
H	G.S. 14-72(b)(3)	Larceny of explosive or incendiary device or substance; receiving or possessing stolen explosive or incendiary device or substance.
H	G.S. 14-72(b)(4)	Larceny of firearm; receiving or possessing stolen firearm.
H	G.S. 14-72(b)(5)	Larceny of record or paper in the custody of the N.C. State Archives; receiving or possessing stolen record or paper.
H	G.S. 14-72.1(d1)	Concealment of merchandise in mercantile establishments. *(Effective 12/1/97)*
H	G.S. 14-72.2	Unauthorized use of an aircraft.
H	G.S. 14-74	Larceny by servants and other employees (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-75	Larceny of chose in action.
H	G.S. 14-75.1	Larceny of secret technical processes.
H	G.S. 14-78	Larceny of ungathered crops.
H	G.S. 14-79	Larceny of ginseng.
H	G.S. 14-79.1	Larceny of pine straw. *(Effective 12/1/97)*
H	G.S. 14-81(a)	Larceny of horses, mules, swine, or cattle.
H	G.S. 14-85	Pursuing livestock with intent to steal.
H	G.S. 14-90	Embezzlement of property received by virtue of office or employment (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-93	Embezzlement by treasurers of charitable and religious organizations (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-94	Embezzlement by officers of railroad companies (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-97	Appropriation of partnership funds by partner to personal use (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-98	Embezzlement by surviving partner (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-100	Obtaining property by false pretenses (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 14-101	Obtaining signatures by false pretenses.
H	G.S. 14-121	Selling of certain forged securities.
H	G.S. 14-122	Forgery of deeds, wills, and certain other instruments.
H	G.S. 14-168.1	Conversion by bailee, lessee, tenant, or attorney-in-fact for more than $400.00.
H	G.S. 14-221.2	Altering court documents or entering unauthorized judgments.

Felony Classification Continued

H	G.S. 14-225.2(a)(1)	Harassment of and communication with jurors.
H	G.S. 14-226	Intimidating or interfering with witnesses.
H	G.S. 14-254	Malfeasance of corporation officers and agents.
H	G.S. 14-256	Prison breach and escape from county or municipal confinement facilities or officers (by convicted felons). *(was Class I - Effective 12/1/97)*
H	G.S. 14-258	Conveying messages and weapons to or trading with convicts and other prisoners.
H	G.S. 14-258.1(a)	Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities.
H	G.S. 14-258.2	Possession of dangerous weapon in prison.
H	G.S. 14-258.2(b)	Assisting a prisoner in attempting to escape and committing an assault resulting in bodily injury or effecting the escape.
H	G.S. 14-269.8	Purchase of firearms by person subject to domestic violence order prohibited.
H	G.S. 14-277(b)(5)	Impersonation of a law-enforcement or other public officer. *(Effective 12/1/96)*
H	G.S. 14-288.2(c)	Riot (property damage greater than $1500 or serious bodily injury).
H	G.S. 14-288.6(b)	Looting.
H	G.S. 14-288.20(b)	Training on certain weapons for use in a civil disorder.
H	G.S. 14-291.2	Pyramid and chain schemes prohibited. *(was Class 2 misdemeanor - Effective 12/1/97)*
H	G.S. 14-315(a1)	Selling or giving weapons to minors. *(was Class I - Effective 1/1/97)*
H	G.S. 14-329(a)	Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages.
H	G.S. 14-362.2	Dog fighting and baiting. *(Effective 12/1/97)*
H	G.S. 14-367	Altering the brands of and misbranding another's livestock (Larceny).
H	G.S. 14-398	Theft or destruction of property of public libraries, museums, etc. worth more than $50.
H	G.S. 14-401.11(b)(1)b	Distribution of certain food at Halloween and all other times prohibited (greater than mild physical discomfort without any lasting effect).
H	G.S. 14-401.15	Telephone sales recovery services (if any money/other consideration is collected). *(Effective 1/1/98)*
H	G.S. 14-401.16(a)	Contaminate food or drink to render one mentally incapacitated or physically helpless. *(Effective 12/1/97)*
H	G.S. 14-401.16(b)	Contaminate food or drink to render one mentally incapacitated or physically helpless (unlawful to manufacture controlled substance for the purpose of violating this section). *(Effective 12/1/97)*

Felony Classification Continued

H	G.S. 14-415.3	Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited.
H	G.S. 14-457	Extortion (maliciously threatens to commit an act described in G.S. 14-455).
H	G.S. 15A-287(a)	Interception and disclosure of wire, oral, or electronic communications prohibited.
H	G.S. 15A-288	Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.
H	G.S. 20-106	Receiving or transferring stolen vehicles.
H	G.S. 20-141.5	Speeding to elude arrest; forfeiture of vehicle (two or more aggravating factors present). *(Effective 12/1/97)*
H	G.S. 20-166(a)	Duty to stop in event of accident or collision.
H	G.S. 48-10-102	Unlawful payments related to adoption (second offense).
H	G.S. 53-124	Examiner making false report.
H	G.S. 53-129	Misapplication of bank funds by officer or employee (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 53-130	Making false entries in banking accounts; misrepresenting assets and liabilities of banks.
H	G.S. 58-2-161	False statement to procure or deny benefit of insurance policy or certificate.
H	G.S. 58-2-162	Embezzlement by insurance agents, brokers, or administrators (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 58-30-12(c)	Duty to report insurer impairment; violations; penalties.
H	G.S. 58-50-40	Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.
H	G.S. 62-273	Embezzlement of C.O.D. shipments.
H	G.S. 63-25	Taking of aircraft made crime of larceny (intent to deprive).
H	G.S. 70-40	Penalties (knowingly acquire human skeletal remains removed from unmarked burials in North Carolina).
H	G.S. 75-1	Combinations in restraint of trade illegal.
H	G.S. 78A-57	Criminal penalties (fraud under Securities Act).
H	G.S. 78C-39	Criminal penalties (fraudulent practices of investment advisors).
H	G.S. 80-11.1(b)	Criminal use of counterfeit trademark (value more than $10,000).
H	G.S. 80-11.1(c)	Criminal use of counterfeit trademark device.
H	G.S. 90-95(b)(1)	Manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule I or II Controlled Substance.

Felony Classification Continued

H	G.S. 90-95(b)(2)	Sale of a Schedule III, IV, V or VI Controlled Substance. *(was Class I - Effective 12/1/97)*
H	G.S. 90-95(e)(9)	Possession of a controlled substance on the premises of a penal institution or local confinement facility. *(was Class I - Effective 12/1/97)*
H	G.S. 90-95(h)(1)a	Trafficking in marijuana (more than 10 pounds, less than 50 pounds).
H	G.S. 90-210.70(a)	Embezzlement of funeral funds, penalties (amount involved less than $100,000 - *Effective 12/1/97*).
H	G.S. 97-88.2(a)	Penalty for fraud (obtain/deny workers' compensation). *(Effective 10/1/97)*
H	G.S. 97-88.2(c)	Penalty for fraud (agree to accept/forgo workers' compensation). *(was Class 1 misdemeanor - Effective 10/1/97)*
H	G.S. 97-94(c)	Employers required to give proof . . . criminal penalties for failure to secure payment of compensation (employer willfully fails to secure compensation). *(Effective 10/1/97)*
H	G.S. 97-94(d)	Employers required to give proof . . . criminal penalties for failure to secure payment of compensation (person with authority willfully fails to bring the employer in compliance). *(Effective 10/1/97)*
H	G.S. 106-145.6	Denial, revocation, and suspension of license; penalties for violations.
H	G.S. 106-363	Damaging dipping vats a felony.
H	G.S. 106-763.1	Propagation and production of American alligators (possession of untagged/undocumented alligator). *(Effective 6/19/97)*
H	G.S. 108A-53.1(a)	Illegal purchase or sale of food stamps. *(Effective 12/1/97)*
H	G.S. 108A-53.1(b)	Illegal use or transfer of food stamps (value equals or exceeds $1000). *(Effective 12/1/97)*
H	G.S. 108A-60	Protection of patient property (Medical Assistance Program; willfully embezzle, convert, appropriate).
H	G.S. 133-24	Government contracts; violations of G.S. 75-1 and 75-2.
H	G.S. 133-25	Conviction; punishment (violation of 133-24).
H	G.S. 136-13	Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.
H	G.S. 136-13.2	Falsifying highway inspection reports.
H	G.S. 143-215.88B(e)	Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control).
H	G.S. 143-215.114B(g)	Enforcement procedures: criminal penalties (Air pollution control).
H	G.S. 148-45(b)	Escaping or attempting escape from state prison system. *(was Class I - Effective 12/1/97)*
H	G.S. 148-46.1	Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform. *(was Class I - Effective 12/1/97)*

Felony Classification Continued

I	G.S. 7A-456(a)	False statements to the question of indigency.
I	G.S. 10A-12(c)	Notary taking acknowledgment or performing verification knowing it is false or fraudulent.
I	G.S. 14-3(c)	Class 1 misdemeanor offense committed because of the victim's race, color, religion, nationality, or country of origin.
I	G.S. 14-12.12(b), -12.15	Placing burning/flaming cross on property of another or on public street or highway.
I	G.S. 14-12.13,-12.15	Placing exhibit with intention of intimidating, etc., another.
I	G.S. 14-12.14,-12.15	Placing exhibit while wearing mask, hood, or other disguise.
I	G.S. 14-13	Counterfeiting coin and uttering coin that is counterfeit.
I	G.S. 14-14	Possessing tools for counterfeiting.
I	G.S. 14-16.6(a)	Assault on executive or legislative officer.
I	G.S. 14-16.7(a)	Threats against executive or legislative officers.
I	G.S. 14-16.7(b)	Threats against executive or legislative officers by mail.
I	G.S. 14-32.3(b)	Domestic abuse, neglect, and exploitation of disabled or elder adults.
I	G.S. 14-34.6(b)	Assault or affray on an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.
I	G.S. 14-45	Using drugs or instruments to produce miscarriage or injure pregnant woman.
I	G.S. 14-46	Concealing birth of child.
I	G.S. 14-55	Preparation to commit burglary or other housebreakings.
I	G.S. 14-56	Breaking or entering into/out of railroad cars, motor vehicles, trailers, etc.
I	G.S. 14-56.1	Breaking into or forcibly opening coin- or currency-operated machines.
I	G.S. 14-56.3	Breaking into paper currency machines.
I	G.S. 14-69.1(b)	Making a false report concerning destructive device.
I	G.S. 14-69.2(b)	Perpetrating hoax by use of false bomb or other device.
I	G.S. 14-81(a1)	Larceny of dogs.
I	G.S. 14-89.1	Safecracking.
I	G.S. 14-107	Worthless checks (amount more than $2,000).
I	G.S. 14-113.9.-113.17(b)	Financial transaction card theft.
I	G.S. 14-113.11, -113.17(b)	Forgery of financial transaction card.
I	G.S. 14-113.13(a), (b), -113.17(b)	Financial transaction card fraud, value over $500.

Felony Classification Continued

I	G.S. 14-113.14, -113.17(b)	Criminal possession of financial transaction card forgery devices.
I	G.S. 14-113.15, -113.17(b)	Criminal receipt of goods and services fraudulently obtained worth more than $500.00.
I	G.S. 14-113.15A, -113.17(b)	Criminal factoring of financial transaction card records.
I	G.S. 14-119	Forgery of notes, checks, and other securities.
I	G.S. 14-120	Uttering forged paper or instrument containing a forged endorsement.
I	G.S. 14-123	Forging names to petitions and uttering forged petitions.
I	G.S. 14-124	Forging certificate of corporate stock and uttering forged certificates.
I	G.S. 14-125	Forgery of bank notes and other instruments by connecting genuine parts.
I	G.S. 14-136	Intentionally setting fire to grass and brushlands and woodlands.
I	G.S. 14-141	Burning or otherwise destroying crops in the field, damage over $2,000.
I	G.S. 14-149	Desecrating, plowing over or covering up graves.
I	G.S. 14-159.2(c)	Interference with animal research (if the animal released has an infectious disease).
I	G.S. 14-163	Poisoning livestock.
I	G.S. 14-163.1	Injuring, maiming, or killing law-enforcement agency animal.
I	G.S. 14-177	Crime against nature.
I	G.S. 14-183	Bigamy.
I	G.S. 14-190.1	Obscene literature and exhibitions.
I	G.S. 14-190.6	Employing or permitting minor to assist in obscenity offense.
I	G.S. 14-190.7	Dissemination to minors under the age of 16 years.
I	G.S. 14-190.8	Dissemination to minors under the age of 13 years.
I	G.S. 14-190.17A	3rd degree sexual exploitation of a minor.
I	G.S. 14-202.3	Solicitation of a child by computer to commit an unlawful sex act. *(Effective 12/1/96)*
I	G.S. 14-208.11	Failure to register - Sex Offender Registration Program. (*Effective until 4/1/98*)
I	G.S. 14-210	Subornation of perjury.
I	G.S. 14-211	Perjury before legislative committees.
I	G.S. 14-221.1	Altering, destroying, or stealing evidence of criminal conduct.
I	G.S. 14-225.2(a)(2)	Harassment of and communication with jurors.
I	G.S. 14-228	Buying and selling offices.

Felony Classification Continued

I	G.S. 14-233	Making of false report by bank examiners; Accepting bribes.
I	G.S. 14-253	Failure of certain railroad officers to account with successors.
I	G.S. 14-259	Harboring or aiding certain persons charged or convicted of a felony.
I	G.S. 14-269	Carrying concealed weapons (pistol or gun) (second or subsequent offense).
I	G.S. 14-269.2(b)	Possess firearm or explosive on educational property.
I	G.S. 14-269.2(c)	Aid minor to possess firearm or explosive on educational property.
I	G.S. 14-277(a)(4)	Impersonation of a law-enforcement or other public officer. *(Effective 12/1/96)*
I	G.S. 14-277.3	Stalking (second conviction within five years).
I	G.S. 14-277.4	Obstruction of health care facilities (third conviction within three years).
I	G.S. 14-278	Willful injury to property of railroads.
I	G.S. 14-280	Shooting or throwing at trains or passengers.
I	G.S. 14-282	Displaying false lights on seashore.
I	G.S. 14-309.5(b)	Bingo.
I	G.S. 14-309.14	Beach bingo (with a prize of $50.00 or greater).
I	G.S. 14-320.1	Transporting child outside the state with intent to violate custody order.
I	G.S. 14-322.1	Abandonment of child or children for six months.
I	G.S. 14-362.1(d)	Animal fights, other than cock fights, and animal baiting (second offense).
I	G.S. 14-373	Bribery of players, managers, coaches, referees, umpires, or officials.
I	G.S. 14-374	Acceptance of bribes by players, managers, coaches, referees, umpires, or officials.
I	G.S. 14-377	Intentional losing of athletic contest or limiting margin of victory or defeat.
I	G.S. 14-399(e)	Littering in an amount exceeding 500 pounds or 100 cubic feet for commercial purposes.
I	G.S. 14-401.11(b)(1)a	Distribution of certain food at Halloween and all other times prohibited (limited to mild physical discomfort without any lasting effect).
I	G.S. 14-409.9	Machine guns and other like weapons.
I	G.S. 14-433,-437(a)(1)	Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances (at least 1000 unauth. sound recordings or 100 unauth. audio-visual recordings; second offense).

Felony Classification Continued

I	G.S. 14-434,-437(a)(1)	Retailing, etc., of certain recorded devices unlawful (1000 unauth. sound recordings/100 unauth. audio visual recordings; second offense).
I	G.S. 14-435,-437(a)(1)	Recorded devices to show true name and address of manufacturer (1000 unauth. sound recordings/100 unauth. audio visual recordings; second offense).
I	G.S. 15A-543(b)	Failure to appear (if released in connection with a felony charge or conviction).
I	G.S. 15B-7	Filing of false application for compensation award (more than $400.00).
I	G.S. 18B-102.1	Direct shipments from out-of-state prohibited (alcohol). *(Effective 12/1/97)*
I	G.S. 18B-307(c)	Unlawful manufacturing of alcoholic beverage (second offense).
I	G.S. 20-30(7)	Violations of License or Learner's Permit provisions.
I	G.S. 20-31	Making false affidavits perjury (Uniform Driver's License Act).
I	G.S. 20-34.1	Unlawful to issue licenses for anything of value except prescribed fees.
I	G.S. 20-71	Altering or forging certificate of title, registration card or application.
I	G.S. 20-106.1	Fraud in connection with rental of motor vehicles.
I	G.S. 20-106.2(d)	Sublease and loan assumption arranging regulated.
I	G.S. 20-109(a)	Altering or changing engine or other numbers (wilful).
I	G.S. 20-109(b)	Altering or changing engine or other numbers (intent to conceal).
I	G.S. 20-112	Making false affidavit perjury (Anti-theft Provisions, Motor Vehicle Act of 1937).
I	G.S. 20-136	Smoke screens.
I	G.S. 20-177	Penalty for felony (Motor Vehicle Act of 1937).
I	G.S. 20-183.8(c)	Forging a motor vehicle inspection sticker.
I	G.S. 20-279.31(c1)	Making false affidavit perjury (Motor Vehicle Safety and Financial Responsibility Act of 1953).
I	G.S. 20-343, -350	Unlawful change of mileage.
I	G.S. 20-350	Criminal offense (unlawful change of mileage).
I	G.S. 21-42	Issuing false bills or violating Chapter made felony.
I	G.S. 23-43	False taking of debtor's oath.
I	G.S. 53-131	False certification of a check.
I	G.S. 53-132	Receiving deposits in insolvent banks.
I	G.S. 53-287	Criminal penalties (violation of check cashing article). *(Effective 10/1/97)*

Felony Classification Continued

I	G.S. 58-2-180	Punishment for making false statement in financial or other statement.
I	G.S. 58-7-50	Maintenance and removal of records and assets.
I	G.S. 58-8-1	Mutual insurance companies organized; requisites for doing business (false oath in respect to certificate).
I	G.S. 58-19-50	Sanctions (Insurance holding companies).
I	G.S. 58-24-180(d)	Violating 58-24-65: Consolidations and mergers of fraternal benefit societies.
I	G.S. 58-24-180(e)	False statement under oath in any verified report/declaration required by law from fraternal benefit societies, perjury.
I	G.S. 58-70-1	Permit from Commissioner of Insurance; penalty for violation; exception.
I	G.S. 58-71-165	Monthly report required.
I	G.S. 63-27	Operation of aircraft while impaired (second conviction).
I	G.S. 65-71	Penalties (Cemeteries).
I	G.S. 66-135	Bond and trust account required.
I	G.S. 66-225	Violations (Credit Repair Services Act).
I	G.S. 75-12	False swearing by person responding to investigation of trusts and monopolies.
I	G.S. 78A-57	Criminal penalties (Securities Act).
I	G.S. 78C-39	Criminal penalties (Investment Advisors).
I	G.S. 78C-78	Remedies for violation; criminal penalty (athlete agents).
I	G.S. 78D-24	Criminal penalties (Commodities).
I	G.S. 80-11.1(b)	Criminal use of counterfeit trademark (value of more than $3,000 up to $10,000).
I	G.S. 90-95(b)(2)	Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance.
I	G.S. 90-95(c)	Create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance.
I	G.S. 90-95(d)(1)	Possession of a Schedule I Controlled Substance.
I	G.S. 90-95(d)(2)	Possession of more than four dosage units of Hydromorphone.
I	G.S. 90-95(d)(2)	Possession of more than 100 dosage units of any controlled substance.
I	G.S. 90-95(d)(2)	Possession of any amount of Cocaine or Phencyclidine or derivative thereof.
I	G.S. 90-95(d)(4)	Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish.
I	G.S. 90-95(e)(3)	Drug offense punishable by not more than two years and offender has been previously convicted of a drug offense.

Felony Classification Continued

I	G.S. 90-108	Prohibited acts; penalties (Controlled Substance Act).
I	G.S. 90-113.23(c)	Manufacture or delivery of drug paraphernalia (from person over 18 to person under 18).
I	G.S. 93A-40	Registration required of time share projects; real estate salesmen license required.
I	G.S. 93A-58	Registrar required; criminal penalties; project broker (real estate development).
I	G.S. 95-197	Withholding hazardous substance trade secret information.
I	G.S. 105-236(7)	Penalties (attempt to evade or defeat tax).
I	G.S. 105-236(9a)	Penalties (aid or assist in filing fraudulent returns).
I	G.S. 106-350	Sale of tubercular animal a felony.
I	G.S. 106-443	Issuance of false receipt a felony; punishment.
I	G.S. 106-549.26	Inspection of establishment; bribery of or malfeasance of inspector.
I	G.S. 108A-39(b)	Fraudulent misrepresentation (AFDC in amount of more than $400.00).
I	G.S. 108A-53(a)	Fraudulent misrepresentation (Food Stamp Program in amount more than $400.00). *(Effective 12/1/96)*
I	G.S. 108A-53.1(b)	Illegal use or transfer of food stamps (value is at least $500 but less than $1000). *(Effective 12/1/97)*
I	G.S. 108A-63(c)	Medical assistance provider fraud.
I	G.S. 108A-64(c)(1)	Medical assistance recipient fraud (value of assistance is more than $400.00).
I	G.S. 113-209	Taking polluted shellfish at night or with prior conviction forbidden; penalty.
I	G.S. 130A-26.1(f)	Criminal violation of Article 9 (transporting hazardous waste to a facility which does not have a permit).
I	G.S. 130A-26.1(g)	Criminal violation of Article 9 (handling hazardous waste without required documents).
I	G.S. 130A-26A(b)	Violations of Article 4 (Vital Records Law).
I	G.S. 130A-431	Certain vaccine diversions made felony.
I	G.S. 133-31	Perjury; punishment (Public works).
I	G.S. 136-14	Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.
I	G.S. 143-54	False certification that bids are submitted without collusion.
I	G.S. 143-215.6B(g)	Enforcement procedures: criminal penalties (Pollution control).

Felony Classification Continued

I	G.S. 143-215.88B(h)	Enforcement procedures: criminal penalties (false statement/ tampering with recording device under hazardous waste article). *(Effective 10/1/97)*
I	G.S. 143-215.104Q(b)	Enforcement procedures; criminal penalties (dry-cleaning solvents; knowing and willful violation). *(Effective 1/1/98)*
I	G.S. 157-29.1	Fraudulent misrepresentation (Housing Assistance for more than $400).
I	G.S. 163-72.4(f)	Registration by mail (willfully giving false information).
I	G.S. 163-81	Driver license examiners to accept applications to register voters (willfully giving false information).
I	G.S. 163-90.3	Making false affidavit perjury (Elections).
I	G.S. 163-226.3	Certain acts declared felonies (Elections).
I	G.S. 163-237(c)	Forgery of signature on absentee ballot.
I	G.S. 163-275	Certain acts declared felonies (Elections).
I	G.S. 163-278.53	Criminal punishment (Elections).

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

	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

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	DISPOSITION 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 73-92	A 100-125	A 116-145	A 133-167	A 151-188	A 168-210	DISPOSITION 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 64-80	A 77-95	A 103-129	A 117-146	A 133-167	A 146-183	DISPOSITION 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 25-31	I/A 29-36	A 34-42	A 46-58	A 53-66	A 59-74	DISPOSITION 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 16-20	I/A 19-24	I/A 21-26	A 25-31	A 34-42	A 39-49	DISPOSITION 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 13-16	I/A 15-19	I/A 16-20	I/A 20-25	A 21-26	A 29-36	DISPOSITION 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

Structured Sentencing Grid
4/14/99

PRIOR RECORD LEVEL

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	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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 815
Proposed Committee Substitute H815-PCSRL-001
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
15-APR-99 10:26:13

Short Title: Left Turn on Red. (Public)

Sponsors:

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS AND TO APPROPRIATE FUNDS FOR SIGNAGE NECESSARY TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. --

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling

traffic passing straight through an intersection; ~~provided that,~~ provided:

a. ~~except~~ Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the ~~intersection.~~ intersection; or

b. Except where prohibited by an appropriate sign, vehicular traffic that is (i) in the leftmost lane of travel on a one-way street, (ii) facing a red light, and (iii) at an intersection with another one-way street with traffic travelling from the turning driver's right to the turning driver's left may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall come to a complete stop and shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject

to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

Section 2. There is appropriated from the Highway Fund to the Department of Transportation the sum of ten thousand dollars ($10,000) for the 1999-2000 fiscal year for the signage necessary to implement Section 1 of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 815

Short Title: Left Turn on Red. (Public)

Sponsors: Representatives Hensley, Gulley, Howard, and McAllister.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. --

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection; ~~provided that,~~ provided:

a. ~~except~~ Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the ~~intersection.~~ intersection; or

b. Except where prohibited by an appropriate sign, vehicular traffic that is (i) in the leftmost lane of travel on a one-way street, (ii) facing a red light, and (iii) at an intersection with another one-way street with traffic travelling from right to left may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic but the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, without stopping, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

Section 2. There is appropriated from the Highway Fund to the Department of Transportation the sum of ten thousand dollars ($10,000) for the 1999-2000 fiscal year for the signage necessary to implement Section 1 of this act.

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

HOUSE BILL 815:
Allow Left Turn on Red
Proposed Committee Substitute

BILL ANALYSIS

Committee: House Judiciary II
Date: April 15, 1999
Version: 1

Introduced by: Representative Hensley
Summary by: Steven Rose
Committee Counsel

The Proposed Committee Substitute for House Bill 815 would permit a left turn on red from the leftmost lane of travel on a one-way street to the leftmost lane of travel of an intersecting street. The turning driver must come to a complete stop and must yield the right-of-way. Signs would be posted where such turns are prohibited. The bill appropriates $10,000 from the Highway Fund to the Department of Transportation for the 1999-2000 Fiscal Year for signage. The act is effective when it becomes law.

At present, a right turn on red is permitted in North Carolina, except where prohibited by a sign. Left turns on red are prohibited. Some 44 states permit some form of left turn on red.

H815-SMRL-001

VISITOR REGISTRATION SHEET DATE 15 April 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRED TAYLOR	WRAL-TV
Romer Delmas Watson	
Ben Eason	
Oak Mikel	Scenic North Carolina
Paul Stock	NC Bar Ass Assn.
RON MOORE	DIST. ATTY
Brenda Shuford	
Harley Shuford	Int. Assoc Assoc Dirs.
Alan Miles	Bailey & Dixon LLP
David R. Anders	RJRNC
Hugh Tilson	NCHA
Andy Ellen	NC Retail Merchants Assoc.
Jeff Stewart	CCPS
John M May	NC CWA Council
Mike Quinn	NC State AFLCIO
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
David Farrell	"
Larry Heckner	Household Financial Group
Andy Romanet	N.C.L.M.

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

April 20, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HOUSE BILL 815 -LEFT TURN ON RED.

STAFF EXPLANATION

HOUSE BILL 946 -ALIENATION OF AFFECTION.

STAFF EXPLANATION

HOUSE BILL 975 -SAVAN EXEMPTION.

STAFF EXPLANATION

HOUSE BILL 644 -QUICK TAKE NOTICE OF APPEAL.

COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, APRIL 20, 1999

The meeting was called to order by the Chairman, Rep. Braswell. The Pages assisting the Committee were Nicole Hodges and Neica Evins.

The bills on the agenda were HB 815, sponsored by Rep. Hensley, HB 946, sponsored by Rep. Decker, HB 644, sponsored by Rep. Gulley, and HB 975, sponsored by Rep. Braswell.

The Committee continued their discussion of **HB 815 (Short title: Left Turn on Red)** which they had begun to discuss at the previous meeting. Several persons were recognized to comment on the bill including the following who spoke in opposition to the bill: Ben Eason (a Raleigh resident), William Waters (a Raleigh resident), Herman Gruber (former director of the Agency of the Blind), and John Deluca (current Director of the Agency of the Blind). Rep. Hensley, the bill sponsor, was recognized to comment on the bill and noted that the Department of Transportation was in support of the bill. Rep. Hensley explained that left turn on red would be permitted on intersections of one way streets. The law had been passed in forty-four other states. Rep. Hensley moved for a favorable report of the Proposed Committee Substitute and an unfavorable report to the original bill. Rep. Hensley amended his motion and added that the committee substitute be re-referred to the Appropriations Committee if the Chair felt it was necessary. The Chair called for the vote by a show of hands. Rep. Kiser asked for a recorded division. The vote was by roll call (See attached Exhibit A). The bill passed by a vote of 6 aye votes and 5 no votes.

HB 946 (Short title: Alienation of Affection) was the next bill considered by the Committee. Rep. Decker was recognized to explain the bill and a bill analysis was passed out to the Committee. The Chair commented that the committee had dealt at length with the issue of alienation of affection. HB 946 would create a new Article Three of the Chapter and the Chair appointed a sub-committee of Rep. Hensley (Chair), Rep. Kiser, Rep. Michaux, and Rep. Sherrill. The bill was referred to the subcommittee.

HB 975 (Short title: SAVAN Exemption) was the next bill considered by the Committee. Rep. Braswell asked Rep. Michaux to preside at this time. Rep. Braswell was recognized to explain the bill. Rep. Braswell moved that the Proposed Committee Substitute be considered by the committee. The motion passed. Jon Williams, Deputy General Counsel for the Department of Crime Control and Public Safety, spoke in support of the bill. Staff Counsel, Robin Johnson commented on the Bill Analysis. Rep. Braswell moved for a favorable report of the Committee Substitute and an unfavorable report to the original bill. The committee substitute was given a favorable report and an unfavorable report was given to the original bill.

HB 644 (Short title: "Quick Take" Notice of Appeal) was considered by the Committee. The bill sponsor, Rep. Gulley, was recognized to explain the bill. Staff Counsel, Steve Rose, commented on the bill (See Bill Analysis, Exhibit B). Rep. Barefoot moved for a favorable report to HB 644. Andy Romonet of the NC League of Municipalities spoke in opposition to the bill. He stated that this bill would confuse current law. There was further discussion by the committee. It was ten minutes to the hour of session and Rep. Sherrill moved for adjournment. The motion was passed.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot	Rep. Cansler
Rep. Crawford	Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill	Rep. Capps	Rep. Hensley	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

Exhibit "A"

ROLL CALL VOTE

6 YES 5 NO = 11 (TOTAL)

HB# 815
SB# ____

HOUSE STANDING COMMITTEE ON JUDICIARY II

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	BRASWELL, CHAIR	✓	___	
___	___	MICHAUX, V. CHAIR	✓	___	
___	___	BAREFOOT	✓	___	
___	___	CANSLER	___	✓	
___	___	CAPPS	___	✓	
___	___	CRAWFORD	✓	___	
___	___	DEDMON (MAJORITY WHIP)	___	___	
___	___	HENSLEY	✓	___	
___	___	JARRELL	✓	___	
___	___	KISER	___	✓	
___	___	RUSSELL	___	✓	
___	___	SHERRILL	___	✓	
___	___		___	___	
___	___		___	___	
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___	___		___	___	

Ex officio Members

___ ___ Speaker Pro Tem, HACKNEY

___ ___ Majority Leader, BADDOUR

___ ___ Majority Whip, EARLE

___ ___ REP. CUNNINGHAM

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 815 A BILL TO BE ENTITLED AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 815
Proposed Committee Substitute H815-PCSRL-001
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
15-APR-99 10:26:13

Short Title: Left Turn on Red. (Public)

Sponsors:

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS AND TO APPROPRIATE FUNDS FOR SIGNAGE NECESSARY TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. --

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling

traffic passing straight through an intersection; ~~provided that,~~ provided:

a. ~~except~~ Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the ~~intersection.~~ intersection; or

b. Except where prohibited by an appropriate sign, vehicular traffic that is (i) in the leftmost lane of travel on a one-way street, (ii) facing a red light, and (iii) at an intersection with another one-way street with traffic travelling from the turning driver's right to the turning driver's left may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall come to a complete stop and shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject

to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

Section 2. There is appropriated from the Highway Fund to the Department of Transportation the sum of ten thousand dollars ($10,000) for the 1999-2000 fiscal year for the signage necessary to implement Section 1 of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 815
Proposed Committee Substitute H815-PCS6172-RL

Short Title: Left Turn on Red. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS AND TO APPROPRIATE FUNDS FOR SIGNAGE NECESSARY TO IMPLEMENT THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-158(b) reads as rewritten:

"(b) Control of Vehicles at Intersections. --

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection; ~~provided that,~~ provided:

a. ~~except~~ Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a

right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the ~~intersection.~~ intersection; or

b. Except where prohibited by an appropriate sign, vehicular traffic that is (i) in the leftmost lane of travel on a one-way street, (ii) facing a red light, and (iii) at an intersection with another one-way street with traffic travelling from the turning driver's right to the turning driver's left may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall come to a complete stop and shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at (i) an appropriately marked stop line, or if none, (ii) before entering a marked crosswalk, or if none, (iii) before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street."

Section 2. There is appropriated from the Highway Fund to the Department of Transportation the sum of ten thousand dollars ($10,000) for the 1999-2000 fiscal year for the signage necessary to implement Section 1 of this act.

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

HOUSE BILL 815:
Allow Left Turn on Red
Proposed Committee Substitute

BILL ANALYSIS

Committee: House Judiciary II
Date: April 15, 1999
Version: 1

Introduced by: Representative Hensley
Summary by: Steven Rose
Committee Counsel

The Proposed Committee Substitute for House Bill 815 would permit a left turn on red from the leftmost lane of travel on a one-way street to the leftmost lane of travel of an intersecting street. The turning driver must come to a complete stop and must yield the right-of-way. Signs would be posted where such turns are prohibited. The bill appropriates $10,000 from the Highway Fund to the Department of Transportation for the 1999-2000 Fiscal Year for signage. The act is effective when it becomes law.

At present, a right turn on red is permitted in North Carolina, except where prohibited by a sign. Left turns on red are prohibited. Some 44 states permit some form of left turn on red.

H815-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 946

Short Title: Alienation of Affection. (Public)

Sponsors: Representative Decker.

Referred to: Judiciary II.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE COMMON LAW CAUSE OF ACTION OF ALIENATION OF SPOUSAL AFFECTION; AND TO CREATE CAUSES OF ACTION FOR ALIENATION OF PARENTAL AND GRANDPARENTAL AFFECTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Alienation of Affection.

"**§ 50-40. Alienation of spousal affection.**

(a) Each of the following elements are required for an alienation of spousal affection cause of action:

(1) The existence of a marriage characterized by genuine love and affection;

(2) The love and affection of one spouse for the other is alienated and destroyed; and

(3) The wrongful and malicious conduct of the defendant is the controlling cause of this alienation.

(b) A cause of action for alienation of spousal affection may be maintained only by either spouse against a third party.

(c) Upon a finding of alienation of spousal affection by a preponderance of the evidence, a court may order monetary damages.

"**§ 50-41. Alienation of parental affection.**

(a) Each of the following elements is required for an alienation of parental affection cause of action:

(1) The existence of a relationship between a parent and a minor child characterized by genuine love and affection;

(2) The love and affection of the minor child for the parent is alienated and destroyed; and

(3) The wrongful and malicious conduct of the minor child's other parent is the controlling cause of this alienation.

(b) A cause of action for alienation of parental affection may be maintained only by one parent against the other parent of the child.

(c) Upon a finding of alienation of parental affection by a preponderance of the evidence, a court may order monetary damages or may issue or modify an order for visitation or custody of the minor child. No order regarding visitation or custody of a minor child shall be made unless the court finds that it is in the best interests of the child.

"**§ 50-42. Alienation of grandparental affection.**

(a) Each of the following elements are required for an alienation of grandparental affection cause of action:

(1) The natural love and affection of the minor child for the biological grandparent is alienated and destroyed, or is not allowed to develop; and

(2) The wrongful and malicious conduct of one or both of the minor child's parents is the controlling cause of this alienation.

(b) A cause of action for alienation of grandparental affection may be maintained only by a grandparent against one or both of the parents of the child.

(c) Upon a finding of alienation of grandparental affection by a preponderance of the evidence, a court may order monetary damages or may issue or modify an order for visitation with the minor child. The court may order visitation with the minor child in favor of the grandparents even if custody of the minor child is not in dispute. No order regarding visitation with a minor child shall be made unless the court finds that it is in the best interests of the child."

Section 2. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

BILL ANALYSIS

HOUSE BILL 946: Codify Alienation of Spousal Affection; Create Causes of Action for Alienation of Parental and Grandparental Affection

Committee: House Judicicary I Committee
Date: April 20, 1999
Version: 1

Introduced by: Representative Decker
Summary by: Steven Rose, Committee Counsel

House Bill 946 would codify the common law action of alienation of spousal affection. It would also create two new torts: alienation of parental affection and alienation of grandparental affection. House Bill 946 raises certain constitutional concerns, which are discussed below.

House Bill 946 creates a new Article 3 of Chapter 50 of the General Statutes. The three causes of action are codified in this Article.

Proposed G.S. 50-40 creates a codified action for alienation of spousal affection. The elements are similar to the common law cause of action:

1. Existence of a marriage with genuine love and affection.
2. The love and affection of one spouse for the other is alienated and destroyed by a third party.
3. The wrongful and malicious conduct of the defendant is the cause.

Subsection (c) of Proposed G.S. 50-40 provides that, upon a finding of alienation of spousal affection by a preponderance of the evidence, **a court may order monetary damages.** This language suggests that at least the determination of damages will be by the judge rather than the jury. Since alienation of spousal affection is a cause of action known at common law, the constitution of this State would require that a jury trial be available for the determination of all issues of fact, including damages.

Proposed G.S. 50-41 creates an action for alienation of parental affection. This does not exist at common law. The action may only be brought by one parent against the other parent of the child. In order to maintain the action, the following are necessary:

1. Existence of a relationship between parent and minor child characterized by genuine love and affection.
2. The love and affection of the child for the parent is alienated and destroyed by the other parent.
3. The cause of this alienation is the wrongful and malicious conduct of the other parent.

When a finding of alienation of parental affection is made, the court may order monetary damages or may issue or modify an order for visitation or custody of a minor child. Any order for visitation or custody must be found to be in the best interest of the child.

At the present time, custody and visitation is decided in the District Court. This proposed statute is not specific as to which court has jurisdiction, but if the damages claimed are in excess of $10,000, the jurisdiction would lie in the Superior Court.

Proposed G.S. 50-42 creates a cause of action for alienation of grandparental affection. This does not exist of common law. The following elements must be proved:

1. The natural love and affection of the minor child for a biological grandparent is alienated and destroyed, or not allowed to develop.
2. The wrongful and malicious conduct of one or both of the parents is the cause.

The action may only be maintained by a grandparent against the parent or parents. If the court finds for the grandparent, the court may order monetary damages or may issue or modify an order for visitation with the minor child. The court may order visitation for the grandparent even if custody of the child is not in dispute. Any order of visitation must be found to be in the best interest of the child.

The granting of jurisdiction of the court to order visitation in the favor of the grandparents raises a constitutional question. The Supreme Court of the United States has held that parents have a fundamental right to make decisions for the care, custody, companionship, and management of their children. In Petersen v. Rogers, 337 N.C. 397 (1994) the North Carolina Supreme Court stated:

> We hold that absent a finding that parents (i) are unfit or (ii) have neglected the welfare of their children, the constitutionally-protected right of parents to custody, care, and control of their children must prevail.

It should be pointed out that under current North Carolina statutory law, the court may not determine custody or visitation for grandparents unless there is an ongoing custody proceeding. See G.S. 50-13.1 and various cases decided under that statute.

There is also an equal protection question raised by giving the rights contained in G.S. 50-42 only to biological grandparents, and withholding them from adoptive grandparents.

The act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

H946-SMRL-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 975 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT SERVICES PROVIDED THROUGH THE STATEWIDE AUTOMATED VICTIM ASSISTANCE AND NOTIFICATION SYSTEM ARE SUBJECT TO THE EXEMPTIONS FROM DAMAGE CLAIMS AND OTHER GROUNDS FOR RELIEF PROVIDED FOR BY THE VICTIMS' RIGHTS ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H975-CSRH-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 975
THIS IS A DRAFT 19-APR-99 20:45:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: SAVAN Exemption. (Public)

Sponsors:

Referred to: Judiciary II

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT SERVICES PROVIDED THROUGH THE STATEWIDE AUTOMATED VICTIM ASSISTANCE AND NOTIFICATION SYSTEM ARE SUBJECT TO THE EXEMPTIONS FROM DAMAGE CLAIMS AND OTHER GROUNDS FOR RELIEF PROVIDED FOR BY THE VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1999, G.S. 15A-839 reads as rewritten:

"**§ 15A-839. No money damages.**

This Article ~~does~~ and services provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission do not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees."

Section 2. Effective July 1, 1999, G.S. 15A-840 reads as rewritten:

"**§ 15A-840. No ground for relief.**

The failure or inability of any person to provide a right or service under this ~~Article~~ Article, including a service provided through the Statewide Automated Victim Assistance and Notification system established by the Governor's Crime

Commission, may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim, as a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by the victim."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 975
Proposed Committee Substitute H975-PCS1217-RH

Short Title: SAVAN Exemption. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT SERVICES PROVIDED THROUGH THE STATEWIDE AUTOMATED VICTIM ASSISTANCE AND NOTIFICATION SYSTEM ARE SUBJECT TO THE EXEMPTIONS FROM DAMAGE CLAIMS AND OTHER GROUNDS FOR RELIEF PROVIDED FOR BY THE VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1999, G.S. 15A-839 reads as rewritten:

"**§ 15A-839. No money damages.**

This Article ~~does~~ and services provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission do not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees."

Section 2. Effective July 1, 1999, G.S. 15A-840 reads as rewritten:

"**§ 15A-840. No ground for relief.**

The failure or inability of any person to provide a right or service under this ~~Article~~ Article, including a service provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim, as a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by the victim."

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

HOUSE BILL 975:
SAVAN Exemption

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Braswell
Date:	April 20, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition -- PCS H975-CSRH-001		Committee Counsel

SUMMARY: The proposed committee substitute makes technical changes.

House Bill 975 would clarify that no claim for damages or other relief may arise from the development, implementation, and operation of the Statewide Automated Victim Assistance and Notification (SAVAN) system. This exemption would apply to the State, counties, municipalities, and to any of their agencies, instrumentalities, officers, and employees. The bill would take effect when it becomes law.

CURRENT LAW: The Crime Victims' Rights Act (Article 46 of Chapter 15A) requires law enforcement agencies, district attorneys, and other State and local entities to provide certain services to crime victims. In order to carry out their responsibilities under this Act, these entities will be using an automated notification system (SAVAN). The Governor's Crime Commission designed SAVAN to link agencies to a database that can deliver status information 24 hours/day by telephone to the public on inmates, probationers, and parolees.

The Crime Victims Rights Act specifically provides in G.S. 15A-839 that the Act does not create a claim for damages against the State, a county, a municipality, or any of their agencies, instrumentalities, officers, or employees. G.S. 15A-840 provides that the failure or inability of any person to provide a right or service under the Act is not a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by a victim.

BACKGROUND: Some law enforcement agencies are concerned that they may be liable for problems arising from the development, implementation and operation of SAVAN. An advisory letter dated March 25, 1999, from David Roy Blackwell, Special Deputy Attorney General, to William Dudley, Secretary of Crime Control and Public Safety, attempted to answer this concern. Mr. Blackwell stated, "Clearly, a State, county or municipal agency participating in SAVAN so acts to fulfill its Article 46 responsibilities. So long as the agency took the challenged action pursuant to its obligations" under that Article, then the exemptions under G.S. 15A-839 and 840 would apply.

H975-SMRH-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 644*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors: Representatives Gulley; Allred, Baker, Capps, Carpenter, Clary, Crawford, Davis, Eddins, Hensley, Sexton, Starnes, and C. Wilson.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-41 reads as rewritten:

"**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which the property is taken;

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;

(3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;

(4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents,

inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and

(6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.

(7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(9) In the case of an action commenced to acquire property pursuant to G.S. 40A-42(a), allowing immediate vesting of property rights in the condemnor upon the making of a deposit in accordance with this section, a notice of the owner's rights including the right to answer and to commence an action for injunctive relief.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter."

Section 2. This act becomes effective October 1, 1999, and applies to actions filed on or after that date.

HOUSE BILL 644:
Require Notice of Owner's Rights in Certain Quick-take Eminate Domain Actions

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Representative Gulley
Date:	April 20, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 644 amends G.S. 40A-41 to require that certain public condemnors who institute condemnation proceeding in which title may vest immediately (quick-take proceedings) must include with the complaint a notice of the owner's rights, including the right to answer and to commence an action for injunctive relief.

G.S. 40A-41 specifies the contents of a condemnation complaint brought by a public condemnor listed in G.S. 40A-3(b) or (c). These condemnors include municipalities and counties, plus certain other public entities such as sanitary districts, hospital authorities, water and sewer authorities, and local redevelopment commissions. A copy of G.S. 40A-3 is attached; the complete list is contained in subsection (c). The amendment provides that, when a condemnation action provides for immediate vesting of property rights in the condemnor with a deposit equal to the sum estimated by the condemnor to be just compensation, the complaint must include a notice of the owner's rights, including the right to answer and the right to commence an action for injunctive relief.

Actions where a local public condemnor may acquire immediate title to the property include a municipality opening or improving streets, sidewalks, and other ways; counties or municipalities establishing or improving storm sewer and drainage systems or sanitary sewer systems; cities or counties making other drainage improvements; water and sewer authority improvements; municipal public enterprise projects including electricity, water, wastewater, gas distribution, solid waste disposal facilities, and cable tv; county public enterprises such as water systems, sewage systems, and solid waste disposal systems; acquisition by local boards of education of sites for schools and other school facilities. The complete list is contained in G.S. 40A-42(a), and a copy of G.S. 40A-42 is attached.

The act is effective October 1, 1999 and applies to actions filed on or after that date.

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Article 3.

Condemnation by Public Condemnors.

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0A-42. Vesting of title and right of possession; injunction not precluded.

Article 5.

Return of Condemned Property.

10A-70. Return of condemned property.

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Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprulence," see 16 Campbell L. Rev. 333 1994).

For an article on statutory easements by necessity or cartways, see 75 N.C.L. Rev. 1943 (1997).

For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

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ceedings under Chapter 40A in order to provide relief from judgments or orders when necessary to promote the interests of justice. City of Durham v. Woo, — N.C. App. —, 497 S.E.2d 457 (1998).

Conversion of Private Condemnation Proceedings into Quiet Title Action. — Trial court did not err by applying § 1A-1, Rule 15(b) in such a way as to convert condemnation proceedings brought by private condemnors, with the consent of the parties, into an action to quiet title. VEPCO v. Tillett, 316 N.C. 73, 340 S.E.2d 62 (1986).

Municipal Annexation Proceedings Enjoined by Condemnor-County. — When a county initiates condemnation of property for a sanitary landfill, and the property is being considered for voluntary annexation into a municipality, the county may proceed with

the condemnation action. The county is entitled to an injunction enjoining the annexation proceeding, and the property owners and the municipality may raise the proposed annexation in the answer to the condemnation complaint, for appropriate consideration by the court. Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216, cert. denied, 320 N.C. 798, 361 S.E.2d 91 (1987).

Applied in Bandy v. City of Charlotte, 72 N.C. App. 604, 325 S.E.2d 17 (1985).

Cited in Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987); Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987); Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

§ 40A-2. Definitions.

Legal Periodicals. — For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

Definition of "property" is broad enough to include profits à prendre, requiring just compensation to the owner of that interest when the right to enter upon lands is lost through condemnation. In re Lee, 85 N.C. App. 302, 354 S.E.2d 759, cert. denied, 320 N.C. 513, 358 S.E.2d 520 (1987).

The term "other persons" as used in the cartway statute, does include counties. Davis v. Forsyth County, 117 N.C. App. 725, 453 S.E.2d 231 (1995).

Cited in VEPCO v. Tillett, 316 N.C. App. 73, 343 S.E.2d 188 (1986); Dare County Bd. of Educ. v. Sakaria, 127 N.C. App. 585, 492 S.E.2d 369 (1997); City of Durham v. Woo, — N.C. App. —, 497 S.E.2d 457 (1998).

§ 40A-3. By whom right may be exercised.

(a) Private Condemnors. — For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
   a. Not be less than 50 feet nor more than 100 feet in width; and
   b. Comply with the provisions of G.S. 62-190(b).
   The width of land condemned for any natural gas pipelines shall not be more than 100 feet.
(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.
(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commis-

sion, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding ordered by the Utilities Commission as provided in G.S. 62-232.

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors. — For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes:

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

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(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.
(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.
(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(c) Other Public Condemnors. — For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.
(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.
(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.
(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.
(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.
(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article, provided, however, the provisions of G.S. 162A-7 shall continue to apply.
(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
(13) A regional transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter. (1852, c. 92, s. 1; R.C., c. 61, s. 9; 1874-5, c. 83; Code, s. 1698; Rev., s. 2575; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132; C.S., s. 1706; 1923, c. 205; Ex. Sess. 1924, c. 118; 1937, c. 108, s. 1; 1939, c. 228, s. 4; 1941, c. 254; 1947, c. 806; 1951, c. 1002, ss. 1, 2; 1953, c. 1211; 1957, c. 65, s. 11; c. 1045, s. 1; 1961, c. 247; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1981, c. 919, s. 1; 1983, c. 378, s. 2; 1983 (Reg. Sess., 1984), c. 1084; 1985, c. 689, s. 10; c. 696, s. 2; 1987, c. 2, s. 1; c. 564, s. 13; c. 783, s. 6; 1989, c. 706, s. 3; c. 740, s. 1.1.)

Local Modification. — Guilford: 1987, c. 669, s. 3; Iredell: 1985, c. 570, s. 25; Stanly: 1985, c. 433, s. 2; 1989 (Reg. Sess., 1990), c. 839; Wake: 1985, c. 640, s. 1; 1993, c. 137, s. 2; Winston-Salem/Forsyth County Utility Commission: 1989 (Reg. Sess., 1990), c. 849; city of Asheville: 1985, c. 556, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 3; city of Morganton: 1987, c. 265, s. 1; city of Monroe: 1985, c. 177; city of Raleigh: 1985, c. 556, s. 2; city of Statesville: 1985, c. 570, s. 25; 1987, c. 265, s. 1; town of Carrboro: 1987, c. 476, s. 1; town of Cary: 1993, c. 137, s. 2; town of Wrightsville Beach: 1993, c. 187, s. 1; Grandfather Village: 1987, c. 419, s. 1; village of Pinehurst: 1985, c. 379, s. 2.

Cross References. — As to requirement for consent of board of commissioners in certain counties before land may be condemned or acquired by a unit of local government outside the county, see § 153A-15.

Legal Periodicals. —

For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

I. General Consideration.
II. Public Use.
III. Private Condemnors.
A. In General.
IV. Public Condemnors.
VI. Judicial Review.

I. GENERAL CONSIDERATION.

Chapter Is Applicable to Private Landowners. — Even though private landowners are not specifically mentioned in this section, they are bound by the provisions of this Chapter. Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

Subdivision ordinance as applied by defendant constituted an exaction requiring the court to determine whether the exaction amounted to an unconstitutional taking; therefore, summary judgment for defendant was inappropriate as to that issue. Franklin Rd. Properties v. City of Raleigh, 94 N.C. App. 731, 381 S.E.2d 487 (1989).

Applied in City of Burlington v. Isley Place Condominium Ass'n, 105 N.C. App. 713, 414 S.E.2d 385 (1992).

Cited in Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989); Pinehurst v. Regional Invs., 97 N.C. App. 114, 387 S.E.2d 222 (1990); Board of

Supplement

ARTICLE 3.

Condemnation by Public Condemnors.

§ 40A-40. Notice of action.

Local Modification. — City of Durham: 1993, c. 476, s. 1.

Cross References. — As to requirement for consent of the board of commissioners in certain counties before land may be condemned or acquired by a unit of local government outside the county, see § 153A-15.

CASE NOTES

Cited in Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216 (1987).

§ 40A-41. Institution of action and deposit.

Local Modification. — Cabarrus: 1985, c. 194, s. 2. For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Stated in Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216 (1987).

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§ 40A-42. Vesting of title and right of possession; injunction not precluded.

(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

(1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or

(2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or

(3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.

(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor. (1981, c. 919, s. 1; 1989 (Reg. Sess., 1990), c. 871, s. 1; 1998-212, s. 9.10.)

Local Modification. — Cabarrus: 1991 (Reg. Sess., 1992), c. 937, s. 2; 1993 (Reg. Sess., 1994), c. 700, s. 1; Duplin: 1993 (Reg. Sess., 1994), c. 608, s. 1; Franklin: 1989, c. 432, s. 1; Guilford: 1987, c. 669, s. 4; Person: 1983, c. 829; Wake: 1985, c. 640, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 4; town of Holly Springs: 1985 (Reg. Sess., 1986), c. 941; town of Wrightsville Beach: 1993, c. 187, s. 2. For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1998-212, s. 1.1 provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.5 contains a severability clause.

Effect of Amendments. — The 1998 amendment, effective July 1, 1998, inserted "or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517" in the first sentence of subsection (a).

CASE NOTES

Subsection (a) does not grant landowner a statutory right to bring an action for injunctive relief to bar condemnation proceeding and to prevent the title and the right to immediate possession of the property from vesting in defendant when under § 40A-45 landowner has an adequate remedy of law. Tradewinds Campground, Inc. v. Town of Atlantic Beach, 90 N.C. App. 601, 369 S.E.2d 365, cert. denied, 323 N.C. 180, 373 S.E.2d 126 (1988).

Title of Defendants Holding Property as Tenants by Entirety Need Not Be Divested Simultaneously in Condemnation Proceeding. — Where plaintiff acquired title to defendants' interest in certain property owned by them as tenants by the entirety, and even though plaintiff argued such title on separate dates, this Chapter contains no requirement that title to condemned property be divested simultaneously. Town of Chapel Hill v. Burchette, 100 N.C. App. 157, 394 S.E.2d 698 (1990).

Effect of Answer Which Did Not Contest Plaintiff's Power to Condemn. — Where, in condemnation proceeding original answer of defendant property owner contested only amount of compensation due and did not contest power of plaintiff to condemn property, title to defendant's interest vested in plaintiff at that time, and plaintiff's filing of amended complaint did not void defendant's original answer. Town of

Exhibit "B"

HOUSE BILL 644:
Require Notice of Owner's Rights in Certain Quick-take Eminate Domain Actions

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Representative Gulley
Date:	April 20, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 644 amends G.S. 40A-41 to require that certain public condemnors who institute condemnation proceeding in which title may vest immediately (quick-take proceedings) must include with the complaint a notice of the owner's rights, including the right to answer and to commence an action for injunctive relief.

G.S. 40A-41 specifies the contents of a condemnation complaint brought by a public condemnor listed in G.S. 40A-3(b) or (c). These condemnors include municipalities and counties, plus certain other public entities such as sanitary districts, hospital authorities, water and sewer authorities, and local redevelopment commissions. A copy of G.S. 40A-3 is attached; the complete list is contained in subsection (c). The amendment provides that, when a condemnation action provides for immediate vesting of property rights in the condemnor with a deposit equal to the sum estimated by the condemnor to be just compensation, the complaint must include a notice of the owner's rights, including the right to answer and the right to commence an action for injunctive relief.

Actions where a local public condemnor may acquire immediate title to the property include a municipality opening or improving streets, sidewalks, and other ways; counties or municipalities establishing or improving storm sewer and drainage systems or sanitary sewer systems; cities or counties making other drainage improvements; water and sewer authority improvements; municipal public enterprise projects including electricity, water, wastewater, gas distribution, solid waste disposal facilities, and cable tv; county public enterprises such as water systems, sewage systems, and solid waste disposal systems; acquisition by local boards of education of sites for schools and other school facilities. The complete list is contained in G.S. 40A-42(a), and a copy of G.S. 40A-42 is attached.

The act is effective October 1, 1999 and applies to actions filed on or after that date.

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Article 3.

Condemnation by Public Condemnors.

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:0A-42. Vesting of title and right of possession; injunction not precluded.

Article 5.

Return of Condemned Property.

40A-70. Return of condemned property.

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Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 1994).

For an article on statutory easements by necessity or cartways, see 75 N.C.L. Rev. 1943 (1997).

For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

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ceedings under Chapter 40A in order to provide relief from judgments or orders when necessary to promote the interests of justice. City of Durham v. Woo, — N.C. App. —, 497 S.E.2d 457 (1998).

Conversion of Private Condemnation Proceedings into Quiet Title Action. — Trial court did not err by applying § 1A-1, Rule 15(b) in such a way as to convert condemnation proceedings brought by private condemnors, with the consent of the parties, into an action to quiet title. VEPCO v. Tillett, 316 N.C. 73, 340 S.E.2d 62 (1986).

Municipal Annexation Proceedings Enjoined by Condemnor-County. — When a county initiates condemnation of property for a sanitary landfill, and the property is being considered for voluntary annexation into a municipality, the county may proceed with the condemnation action. The county is entitled to an injunction enjoining the annexation proceeding, and the property owners and the municipality may raise the proposed annexation in the answer to the condemnation complaint, for appropriate consideration by the court. Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216, cert. denied, 320 N.C. 798, 361 S.E.2d 91 (1987).

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Applied in Bandy v. City of Charlotte, 72 N.C. App. 604, 325 S.E.2d 17 (1985).

Cited in Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987); Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987); Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

§ 40A-2. Definitions.

Legal Periodicals. — For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

Definition of "property" is broad enough to include profits à prendre, requiring just compensation to the owner of that interest when the right to enter upon lands is lost through condemnation. In re Lee, 85 N.C. App. 302, 354 S.E.2d 759, cert. denied, 320 N.C. 513, 358 S.E.2d 520 (1987).

The term "other persons" as used in the cartway statute, does include counties. Davis v. Forsyth County, 117 N.C. App. 725, 453 S.E.2d 231 (1995).

Cited in VEPCO v. Tillett, 316 N.C. App. 73, 343 S.E.2d 188 (1986); Dare County Bd. of Educ. v. Sakaria, 127 N.C. App. 585, 492 S.E.2d 369 (1997); City of Durham v. Woo, — N.C. App. —, 497 S.E.2d 457 (1998).

§ 40A-3. By whom right may be exercised.

(a) Private Condemnors. — For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
   a. Not be less than 50 feet nor more than 100 feet in width; and
   b. Comply with the provisions of G.S. 62-190(b).

   The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commis-

sion, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding ordered by the Utilities Commission as provided in G.S. 62-232.

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors. — For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes:

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

.ent domain for the purpose of
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(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.
(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.
(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(c) Other Public Condemnors. — For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.
(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.
(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.
(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.
(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.
(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article, provided, however, the provisions of G.S. 162A-7 shall continue to apply.
(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
(13) A regional transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter. (1852, c. 92, s. 1; R.C., c. 61, s. 9; 1874-5, c. 83; Code, s. 1698; Rev., s. 2575; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132; C.S., s. 1706; 1923, c. 205; Ex. Sess. 1924, c. 118; 1937, c. 108, s. 1; 1939, c. 228, s. 4; 1941, c. 254; 1947, c. 806; 1951, c. 1002, ss. 1, 2; 1953, c. 1211; 1957, c. 65, s. 11; c. 1045, s. 1; 1961, c. 247; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1981, c. 919, s. 1; 1983, c. 378, s. 2; 1983 (Reg. Sess., 1984), c. 1084; 1985, c. 689, s. 10; c. 696, s. 2; 1987, c. 2, s. 1; c. 564, s. 13; c. 783, s. 6; 1989, c. 706, s. 3; c. 740, s. 1.1.)

Local Modification. — Guilford: 1987, c. 669, s. 3; Iredell: 1985, c. 570, s. 25; Stanly: 1985, c. 433, s. 2; 1989 (Reg. Sess., 1990), c. 839; Wake: 1985, c. 640, s. 1; 1993, c. 137, s. 2; Winston-Salem/Forsyth County Utility Commission: 1989 (Reg. Sess., 1990), c. 849; city of Asheville: 1985, c. 556, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 3; city of Morganton: 1987, c. 265, s. 1; city of Monroe: 1985, c. 177; city of Raleigh: 1985, c. 556, s. 2; city of Statesville: 1985, c. 570, s. 25; 1987, c. 265, s. 1; town of Carrboro: 1987, c. 476, s. 1; town of Cary: 1993, c. 137, s. 2; town of Wrightsville Beach: 1993, c. 187, s. 1; Grandfather Village: 1987, c. 419, s. 1; village of Pinehurst: 1985, c. 379, s. 2.

Cross References. — As to requirement for consent of board of commissioners in certain counties before land may be condemned or acquired by a unit of local government outside the county, see § 153A-15.

Legal Periodicals. —

For a comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

I. General Consideration.
II. Public Use.
III. Private Condemnors.
A. In General.
IV. Public Condemnors.
VI. Judicial Review.

I. GENERAL CONSIDERATION.

Chapter Is Applicable to Private Landowners. — Even though private landowners are not specifically mentioned in this section, they are bound by the provisions of this Chapter. Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

Subdivision ordinance as applied by defendant constituted an exaction requiring the court to determine whether the exaction amounted to an unconstitutional taking; therefore, summary judgment for defendant was inappropriate as to that issue. Franklin Rd. Properties v. City of Raleigh, 94 N.C. App. 731, 381 S.E.2d 487 (1989).

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(1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or

(2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or

(3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.

(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor. (1981, c. 919, s. 1; 1989 (Reg. Sess., 1990), c. 871, s. 1; 1998-212, s. 9.10.)

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VISITOR REGISTRATION SHEET

DATE April 20, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AL HARTKOFF	5504 LADY RD. DURHAM
Herman Gruber	NFB of NC
Dixie Gruber	NFB of NC
Johnna Simmons	NFB
Ellen Pernar	NCCB
Donna Pernar	NCCB
Romer Delmashatton	
Andy Romanet	NCLM
Cam Cave	BPMHL
Mary Lowry	GCC
David Jones	GCC
LE Hartsell	NC Bar Association
Ernistelle Steandil	213 A Hudson Street
Becky Sanders	4624 Angier Avenue - Durham, NC
John DeLuca	
Fred McEachern	
Bill Brooks	NCFPC
FRED TAYLOR	WRAL-TV
Sheila Bellairs	self
Danny Rogers	NCDOT
BILL SCOGGIN	NC BAR ASSOC
Joan McALLISTER	NC DIV. OF SOCIAL SERVICES
William Waters	
Ben Erson	
Lon Winn	NCALTCF

VISITOR REGISTRATION SHEET DATE April 20, 1999

JUDICIARY II

Continue:

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Ford	
John Weeks	NCALTC 7

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Wednesday, April 21, 1999
ROOM 421 LOB
2:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HB 644 QUICK TAKE NOTICE OF APPEAL.

STAFF EXPLANATION & COMMITTEE COMMENTS

HB 1020 SAFETY PROFESSIONALS.

STAFF EXPLANATION & COMMITTEE COMMENTS

HB 1021 REVISE UCC FILINGS PROCEDURES.

STAFF EXPLANATION & COMMITTEE COMMENTS

HB 1088 IMPROVE TORRENS LAW.

STAFF EXPLANATION & COMMITTEE COMMENTS

HB 1202 CHILD HEALTH INS./SUPPORT ORDERS.

STAFF EXPLANATION & COMMITTEE COMMENTS

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
WEDNESDAY, APRIL 21, 1999
2:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell.

HB 1020 was removed from the agenda to allow Staff Counsel to review the regulations in regard to the bill.

Rep. Hill was recognized to introduce **HB 1021 (Short title: Revise UCC Filing Procedures).** William Campbell of the Institute of Government and Elaine Harmon of the Lincoln County Register of Deeds Office spoke in support of the bill. Rep. Kiser made a motion for a favorable report of HB 1021. The Committee gave the bill a favorable report.

Rep. Cansler was recognized to introduce **HB 1202 (Short title: Child Health Ins./Support Orders).** Staff Counsel, Robin Johnson, gave an explanation of the bill. Pam Seamans of the North Carolina Social Services Consortium spoke in support of this legislation. Adam Serring of the NC Health Access Coalition also spoke in support of the bill. Rep. Russell made a motion for a favorable report of HB 1202. The Committee gave the bill a favorable report.

Rep. Gulley was recognized to introduce **HB 644 (Short title: Quick Take Notice of Appeal).** A Proposed Committee Substitute was presented. Rep. Capps made a motion to bring the committee substitute before the Committee for consideration. Staff Counsel, Steve Rose, explained the Proposed Committee Substitute. Rep. Sherrill made a motion for a favorable report for the Proposed Committee Substitute and an unfavorable report for the original bill. The Committee approved the Proposed Committee Substitute and gave an unfavorable report to the original bill.

Rep. Barefoot was recognized to introduce **HB 1088 (Short title: Improve Torrens Law).** The Register of Deeds Association supported the bill. Elaine Harmon of the Register of Deeds Office of Lincoln County and Bill Campbell of the Institute of Government spoke in support of the bill. Staff Counsel, Steve Rose, gave an explanation of the bill. Rep. Jarrell made a motion for a favorable report of HB 1088. HB 1088 was given a favorable report by the Committee.

There being no further business before the committee the meeting was adjourned.

Members present:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Crawford	Rep. Hensley
Rep. Jarrell	Rep. Russell	Rep. Sherrill
Rep. Capps	Rep. Kiser	

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 1021 A BILL TO BE ENTITLED AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1021

Short Title: Revise UCC Filings Procedures. (Public)

Sponsors: Representative Hill.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-402 reads as rewritten:

"**§ 25-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.**

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must indicate that the collateral is or includes crops, must contain a description of the real estate concerned, and must contain the county of the debtor's residence, or where the debtor is not a resident of this State the county where the crops are growing or to be grown. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement

is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this State.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State, or when the debtor's location is changed to this State. Such a financing statement must state that the collateral was brought into this State or that the debtor's location was changed to this State under such circumstances; or

(b) Proceeds under G.S. 25-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) ~~A form substantially as follows is sufficient to comply with subsection (1).~~ A financing statement complies with subsection (1) of this section if it is filed on paper that is carbonized or the original statement is accompanied by carbon copies and the form is substantially as follows:

Name of debtor (or assignor) .....
Address .....
Name of secured party (or assignee) .....
Address .....
1. This financing statement covers the following types (or items) of property:
(Describe) .....
2. (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe Real Estate) .....
3. (If applicable) The above goods are to become fixtures on* .....
*Where appropriate substitute either "The above timber is standing on ....." or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on ....."
(Describe Real Estate) .....
(If the debtor does not have an interest of record) The name of a record owner is .....
4. (If products of collateral are claimed) Products of the collateral are also covered.
(use .....
whichever Signature of Debtor (or Assignor)

is .....
applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments. Amendments shall be accompanied by a copy of the original financing statement when filed to be effective.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or a financing statement filed as a fixture filing (G.S. 25-9-313) must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner. A financing statement filed as a fixture filing (G.S. 25-9-313) on a form shall have the appropriate box checked to indicate that the collateral is, or includes, fixtures. If (a) a copy of a security agreement is filed as a financing statement, as authorized by G.S. 25-9-402, or (b) a nonstandard form is filed, to perfect security interests in fixtures, the secured party or other filer shall attach thereto a form financing statement with the appropriate block checked to indicate that the collateral is, or includes, fixtures. If a financing statement is not marked as required by this subsection, it shall not be required to be indexed pursuant to G.S. 25-9-403(7).

(6) A mortgage or deed of trust is effective as a financing statement filed as a fixture filing from the date of its recording if

(a) The goods are described in the mortgage or deed of trust by item or type; and

(b) The goods are or are to become fixtures related to the real estate described in the mortgage or deed of trust; and

(c) The mortgage or deed of trust complies with the requirements for a financing statement in this section; and

(d) The mortgage or deed of trust is duly recorded in the real estate records. Such a mortgage or deed of trust shall not be indexed or filed in the Uniform Commercial Code files. No fee with reference to such a mortgage or deed of trust is required other than the regular recording and satisfaction fees with respect to the mortgage or deed of trust.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change,

unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(9) The Secretary of State shall have the authority to promulgate, issue and prescribe such financing statement forms and such other forms as he deems necessary to be used as standard forms for any filing contemplated by any section of this Article."

Section 2. G.S. 25-9-403(3) reads as rewritten:

"(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, be accompanied by a copy of the original financing statement, identify the original statement by file number and also by the most current file number if any continuation was filed and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm ~~record, or in other cases after one year after the lapse.~~ or other photographic record. In any event, one year after a financing or continuation statement has lapsed, the filing officer may remove the lapsed statement from any files, including computer files, and destroy it immediately. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained. Any continuation statement which is not filed in accordance with the requirements set forth herein and during the stated time periods set forth above shall be invalid."

Section 3. Any register of deeds office in this State that has had computer files for a period of at least five years is not required to cancel financing statements manually.

Section 4. This act becomes effective October 1, 1999.

HOUSE BILL 1021:
Revise UCC Filings Procedures

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hill
Date:	April 21, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1021 would amend provisions of the Uniform Commercial Code – Secured Transactions dealing with the procedure for filing finance statements.

The bill would amend G.S. 25-9-402 to require that a UCC financing statement presented for recording be filed on carbonized paper or be accompanied by carbon copies. It would also require amendments to be filed with a copy of the original financing statement.

The bill would amend G.S. 25-9-403 to require continuation statements to be accompanied by a copy of the original financing statement. Currently, continuation statements must identify the original financing statement by file number.

The bill also would allow filing officers, one year after a filing or continuation statement has lapsed, to remove the statement from the files, including computer files, and to destroy it. Currently, lapsed statements are considered public records and may only be destroyed if their custodian certifies to the Department of Cultural Resources that they have no further use or value for official business. The Department then must certify that they appear to have no further use or value for research or reference. At that time their custodian may destroy them.

Section 3 would provide that if a register of deeds has maintained computerized UCC files for at least 5 years, the register is not required to cancel financing statements manually.

The bill would take effect October 1, 1999.

H1021-SMRH-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 1202 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CHILD IS DEEMED UNINSURED FOR PURPOSES OF HEALTH INSURANCE UNDER HEALTH CHOICE IF THE CHILD'S PARENT FAILS TO COMPLY WITH COURT-ORDERED HEALTH INSURANCE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1202

Short Title: Child Health Ins./Support Orders. (Public)

Sponsors: Representative Cansler.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHILD IS DEEMED UNINSURED FOR PURPOSES OF HEALTH INSURANCE UNDER HEALTH CHOICE IF THE CHILD'S PARENT FAILS TO COMPLY WITH COURT-ORDERED HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-70.21(a) reads as rewritten:

"(a) Eligibility. -- The Department may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

. . .

(3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program ~~benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.~~ benefits.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health

insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term 'responsible parent' means a person who is under a court order to pay child support."

Section 2. G.S. 110-135 reads as rewritten:

"**§ 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~~ 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~~ the 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. In those cases in which a responsible parent is subject to a court order to provide medical support or to maintain health insurance or dental insurance as provided under G.S. 50-13.11 during the time the child is provided health, hospital, or dental services under the Health Insurance Program for Children established by Part 8 of Article 2 of Chapter 108A of the General Statutes, the debt shall be limited to the amount of health, hospital, or dental expenses paid for the child by the Health Insurance Program for Children, and for which the responsible parent is liable under G.S. 50-13.11(e).

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."

Section 3. G.S. 108A-25 is amended by adding the following new subsection to read:

"(b2) The Health Insurance Program for Children is established as a program of public assistance and shall be supervised and administered as provided in Part 8 of this Article."

Section 4. This act is effective when it becomes law.

HOUSE BILL 1202:
Child Health Ins./Support Orders

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Cansler
Date:	April 21, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1202 would deem a child to be uninsured and to qualify for coverage under the Health Insurance Plan for Children (CHIP) when a parent fails to comply with a court order to provide or maintain health insurance for that child. The bill also would explicitly make CHIP a program of public assistance, and would make CHIP coverage a debt to the State (as acceptance of other public assistance is a debt to the State) when a parent is subject to such a court order at the time the child is provided services under CHIP. That parent would then be liable for the cost of services provided under CHIP in the amount for which the parent would be subject under the court order.
The bill would be effective when it becomes law.

BILL ANALYSIS: In 1998, the General Assembly enacted the Health Insurance Program for Children to provide health insurance for children in low-income families who are not covered by Medicaid or private health insurance. One of the conditions that must be met before a child is considered qualified for coverage under CHIP is that custodial parents must agree to notify and cooperate with the child support enforcement agency to enforce orders for medical support or insurance. The bill would remove this condition and would add the provision that would make CHIP coverage a debt to the State when a person fails to provide court-ordered health insurance.

H1202-SMRH-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 644 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

H644-PCSRL-001
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 644*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors:

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"§40A-40. Notice of action.

Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice

shall also state the purpose for which the property is being ~~condemned and~~ condemned, the date condemnor intends to file the ~~complaint.~~ complaint, and in the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), a summary of the owner's rights including the right to commence an action for injunctive relief and the right to answer the complaint.

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 644*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors: Representatives Gulley; Allred, Baker, Capps, Carpenter, Clary, Crawford, Davis, Eddins, Hensley, Sexton, Starnes, and C. Wilson.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-41 reads as rewritten:

"**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which the property is taken;

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;

(3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;

(4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents,

inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and

(6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.

(7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(9) In the case of an action commenced to acquire property pursuant to G.S. 40A-42(a), allowing immediate vesting of property rights in the condemnor upon the making of a deposit in accordance with this section, a notice of the owner's rights including the right to answer and to commence an action for injunctive relief.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter."

Section 2. This act becomes effective October 1, 1999, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 644*
Proposed Committee Substitute H644-PCS1222-RL

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"**§ 40A-40. Notice of action.**

Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being ~~condemned and~~ condemned, the date condemnor intends to file the ~~complaint.~~ complaint, and in the case of a condemnation action to be commenced pursuant to

G.S. 40A-42(a), a summary of the owner's rights including the right to commence an action for injunctive relief and the right to answer the complaint."

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 1088 A BILL TO BE ENTITLED AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1088

Short Title: Improve Torrens Law. (Public)

Sponsors: Representatives Barefoot; and Hill.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 43-5 reads as rewritten:

"**§ 43-5. Fees of officers.**

The examiner ~~hereinbefore~~ provided for in G.S. 43-4 shall ~~receive, as may be allowed by the clerk, a minimum fee of five dollars ($5.00) for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars ($5,000) or less; for each additional thousand dollars ($1,000) of assessed value of property so examined he shall receive fifty cents (50¢); for examination outside of the county he shall receive a reasonable allowance.~~ be compensated as provided in G.S. 1-408. All plats required by this Chapter shall comply with G.S. 47-30 and shall be recorded in the office of the register of deeds, and the recording fee shall be that specified in G.S. 161-10 for recording plats. ~~There shall be allowed to the register of deeds for copying the plot upon registration of titles book two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ The fee for ~~copying or~~ recording new certificates under this ~~Chapter, two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ Chapter shall be that specified in G.S. 161-10 for recording instruments in general. The fee for issuing the certificate and new certificates under this ~~Chapter, fifty cents (50¢) for each;~~ Chapter shall be that specified in G.S. 161-10 for issuing certified copies. The fee for noting the entries or memorandum required and for the entries noting the cancellation of mortgages and all other entries, if any, herein provided ~~for, fifty cents (50¢) for each~~

~~entry. The county or other surveyor employed under the provisions of this Chapter shall not be allowed to charge more than forty cents (40¢) per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner, but he shall be allowed a minimum fee of two dollars ($2.00).~~ for shall be that specified in G.S. 161-10 for recording instruments in general.

There shall be no other fees allowed of any nature except as herein provided, and the ~~bond~~ bonds of the ~~register,~~ register and clerk ~~and sheriff~~ shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter in as full a manner as such bond is now liable by law."

Section 2. G.S. 43-13 reads as rewritten:

"**§ 43-13. Manner of registration.**

(a) The ~~county commissioners of each county shall provide for the~~ register of deeds ~~in the county a book, to be called Registration of Titles, in which the register~~ shall ~~enroll,~~ register and index, as hereinafter provided, the decree of title before mentioned ~~and the copy of the plot contained in the petition,~~ and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered ~~thereon.~~ thereon in the real property records and indexes. The certificate of title and the entries for voluntary and involuntary transactions shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner. If the title be subject to trust, condition, encumbrance or the like, the words 'in trust,' 'upon condition,' 'subject to encumbrance,' 'life estate,' or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the ~~registry.~~ registry, and no new or additional certificate number shall be issued in such circumstances. No erasure, alteration, or amendment shall be made upon the registry after entry and issuance of a certificate of title except by order of a court of competent jurisdiction.

(b) When a voluntary or involuntary transaction is entered on a certificate of title, the certificate with the new entry shall be copied and recorded and indexed in the real property records and indexes. The copied certificate shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner."

Section 3. G.S. 43-31 reads as rewritten:

"**§ 43-31. When whole of land conveyed.**

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance ~~upon or~~ attached to the certificate substantially as follows:

~~A.B. and wife~~ The owners (giving the names of the parties owning land described in the certificate ~~and their wives~~) hereby, in consideration of ..... dollars, sell and convey to ~~C.Bill~~ the purchaser (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed.

The same shall be signed and properly acknowledged by the parties ~~and their wives~~ and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the ~~deed,~~ transfer, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled."

Section 4. G.S. 43-32 reads as rewritten:

"**§ 43-32. Conveyance of part of registered land.**

The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided interest in a registered estate, such instrument ~~or~~ of transfer or conveyance shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be ~~transferred.~~ transferred, but a new survey of the original registered estate shall not be required. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed."

Section 5. G.S. 43-33 reads as rewritten:

"**§ 43-33. Duty of register of deeds upon part conveyance.**

Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the case may be, either by metes and bounds or by reference to a map or plat thereto attached. The register of deeds is responsible for determining that each new certificate of title contains a description of the property transferred or retained but not for verifying the accuracy of any description."

Section 6. G.S. 43-45 reads as rewritten:

"**§ 43-45. Docketed judgments.**

Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, or any lien or notice of lis pendens is filed in the office of the clerk of the superior court, it shall be the duty of the ~~clerk~~ clerk, upon the request of any interested party, to certify the same to the register of deeds. The register of deeds shall ~~thereupon~~ enter upon the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment ~~debtor.~~ debtor, and the register of deeds is authorized to recover the certificate of title pursuant to G.S. 43-40. The register of deeds shall also enter notice of the judgment, lien, or lis pendens on the record copy of the certificate of title, and the encumbrance is valid against the registered estate from the time it is noted on the record copy."

Section 7. G.S. 43-46 reads as rewritten:

"**§ 43-46. Notice of delinquent taxes filed.**

It shall be the duty of the ~~sheriff or other collector of taxes or assessments of each county and town,~~ tax collector of each taxing unit, not later than ~~the first day of March in each year,~~ June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including ~~penalty therefor,~~ interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and ~~such sheriff or other~~ the collector ~~of taxes~~ and his sureties shall be liable for the payment of the taxes and assessments with the ~~penalty and~~ interest thereon. The register of deeds shall enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy. The register of deeds shall enter the notice of cancellation of the tax lien on the record copy of the certificate of title upon presentation of satisfactory evidence of payment."

Section 8. G.S. 43-47 is repealed.

Section 9. G.S. 43-48 reads as rewritten:

"**§ 43-48. Foreclosure of tax lien.** ~~**Sale of unredeemed land; application of proceeds.**~~

~~If there be no redemption of land under the preceding section [G.S. 43-47], in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the State, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars ($5.00); third, to the payment of a commission to the officer making the sale of five per centum (5%) on the first three hundred dollars ($300.00) and two per centum (2%) on the~~

~~residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns.~~ The lien for ad valorem taxes may be foreclosed and the property sold pursuant to G.S. 105-375. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon."

Section 10. This act becomes effective January 1, 2000.

HB 1088:
Improve Torrens Law

BILL ANALYSIS

Committee: House Judiciary II
Date: April 20, 1999
Version: First Edition

Introduced by: Representative Barefoot
Summary by: Steven Rose, Committee Counsel and Giles Perry, Counsel to Land Title Registration Study Committee

SUMMARY: House Bill 1088 makes various changes to the Torrens real property title registration law, including removing the cap on fees that can be authorized for the examiner of title and recording and copying fees that may be collected by the register of deeds, requiring titles by registration to be filed and indexed with the other real property records, clarifying the procedure for applying liens, judgments and tax liens to the property, and changing how Torrens property is to be disposed of for property tax liens.

CURRENT LAW: Current law provides for an alternative method of transferring title for real property through a registration and certification process instead of by deed. This method of registration is commonly known as "Torrens Registration" or "Torrens Title". Title to the property is initially proven by a court action resulting in a judgment of title to the property. Thereafter all matters affecting the property, including subsequent sales and conveyances, are effected by changes made to the certificate of title. These changes include mortgages, easements, judgments, liens, and tax obligations.

Current law caps the fees that may be paid to have the titled examined at $5 for the first $5,000 value, and $.50 per $1000 over $5,000. The fees the register of deeds may charge for copying and filing Torrens documents are also limited. Torrens registrations are kept in a Registration of Titles book, separate from other real property title records.

HOUSE BILL 1088: Below is an explanation of HB 1088 "Torrens Registration System" This bill is similar to the recommendation of the LRC Land Title Registration Committee submitted on March 3, 1998 as its recommendation to the 1998 Regular Session of the General Assembly.

Section 1 of the proposal amends G.S. 43-5, the section that sets fees for examiners under the Torrens law. A Torrens examiner is an attorney appointed by the Clerk of Superior Court to make an independent examination of the title after a petitioner has instituted a proceeding to have a parcel of land registered under the Torrens system. Current law provides that the examiner be paid a minimum of $5 for property valued at $5000 or less, and 50 cents for each additional $1000 of assessed value in the land. Section 1 deletes this archaic fee structure and places compensation of the examiner in the discretion of the Clerk of Court, as with other property related proceedings.

In addition, Section 1:

--amends G.S. 43-5 to require Torrens plats to be recorded as other plats are, with the same fees as provided for other plats in G.S 161-10;

--deletes an archaic reference to county surveyors and a confusing waivable restriction on fees charged by surveyors of property involved in the Torrens proceeding. With this change, a

surveyor's fee in a Torrens action would be a private matter between the petitioner and the surveyor; and

--deletes an obsolete reference to sheriff's bonds. Sheriffs formerly had responsibility for collecting taxes on registered ("Torrrenized") land, but that responsibility has long since been repealed.

Section 2 of the proposal would eliminate the requirement that registers of deeds keep a separate book for registered titles, and instead require them to be indexed in the regular grantor-grantee indexes. Any transactions involving these properties would have to noted by "registered estate no." so they could easily be identified as a "Torrens" property. Section 2 also require any new transaction noted on the certificate of title to be copied, recorded and indexed at the register of deeds.

Section 3 of the proposal updates the language of G.S. 43-31, the section that sets out the proper language to use in a Torrens certificate.

Section 4 of the proposal eliminates the requirement for a survey of the entire original registered tract when a portion of the tract is transferred.

Section 5 of the proposal clarifies that in the case of the transfer of a portion of a Torrenized tract, the register of deeds is responsible for ensuring the new certificate contain a description of the property transferred, but is not responsible for the accuracy of the description.

Section 6 of the proposal would require the clerk of court, upon request, to certify to the register of deeds any judgments, liens and notices of lis pendens. The register of deeds would then be required to note the judgment, lien, or notice of lis pendens on the record copy of the certificate of title. Recording of notice of the judgment, liens, or lis pendens on the record copy would make the encumbrance valid against the registered estate from the time of recordation.

Section 7 of the proposal changes the method for attachment of tax liens on registered property. Under current law, tax liens attach on registered property only if the collector files a notice of tax lien with the register of deeds by March 1 of each year. The proposal would change this date to June 30, and require the register of deeds to note the delinquency on the record copy of the certificate of title. The act of noting the delinquency on the record copy would make the tax line valid from that time forward.

Section 8 of the proposal repeals G.S. 43-47, a unique method for sale of registered property for satisfaction of tax liens. The standard tax lien method is referenced in Section 9.

Section 9 of the proposal eliminates an archaic method for sale and distribution of proceeds of the foreclosure of registered property for taxes or other liens, and references the standard tax lien foreclosure statute .

Section 10 provides that the proposed bill would become effective January 1, 2000.

Washington County Reg. of Deeds

"TORRENS"

The judicial system of registering titles to land was enacted in North Carolina by Chapter 90 of the 1913 Public Laws, now codified as Chapter 43 of the General Statutes. It is generally known as the torrens law. The principle of the "torrens system" is conveyance by registration and certificate instead of by deed, and assimilates the transfer of land to the transfer of stock in corporations. Not all 100 counties presently have registered land but anyone that owns land could petition the court to have their land registered under this system.

The torrens system was basically used by owners of tracts of land which consisted of thousands of acres, mostly unclear, and with little or no roadways. The purpose of having these tracts registered under this system was to protect the owner from rights or claims of others and to prevent someone from going on the land and clearing out a small portion and claiming it by "squatter's rights". Each tract is surveyed and assigned a registered estate number which stays with the land until it is divided, at which time new numbers are assigned to each new tract. The sale and transfer is accomplished by execution and acknowledgment of a paperwriting in the form set out in GS 43-31, which paperwriting has the full force and effect of a deed in fee simple. This paperwriting (commonly referred to as the transfer) must be presented to the register of deeds together with the seller's certificate of title. The register of deeds examines the documents then records the transfer and the new certificate of title. The original certificate is cancelled.

When a person purchases property under common law the owner receives a deed for the property. If the deed is lost or the owner (or one of the owners) dies this does not present a problem as long as the deed was recorded. Under the torrens system if a certificate of title is lost the owner must petition the court to have a new certificate issued by the register of deeds. Also if one of the owners dies then the surviving party must petition the court to have a certificate of title issued in their name. Both of these proceedings take time and are costly to the owner. In each case a court order is filed directing the register to issue a new certificate. All liens, whether voluntary or involuntary, must be noted on the original certificate as well as the record copy. For example, if a registered estate is used as security for a deed of trust then the owner must present his certificate of title so that the lien is noted on it. The secured party then holds the certificate until the loan is paid, at which time the certificate is released back to the owner and the register cancels the lien on the certificate as well as on the record copy.

In the case of a division of a registered estate a survey is required showing the part being conveyed and the portion being retained. A transfer is recorded along with two new certificates of title – one to the purchaser and one to the owner showing the portion being retained. The original certificate of title for this land is turned in to the register to be cancelled. In any case where an old certificate is cancelled and a new one is issued the register has to be certain that any liens or encumbrances that were listed on the old certificate be listed on the new certificate unless they have been satisfied or cancelled. This is a much more complicated method of transfer than common law deed and places much more responsibility on the register of deeds.

The purpose of this bill is to improve and modernize the torrens procedures. The changes deal with revising antiquated language, revising fees to that of other real estate fees and updating indexing procedures.

Section 1 amends the fees set for examiners under the torrens law. An examiner is an attorney appointed by the clerk of superior court to make an independent examination of the title after a petitioner has instituted a proceeding to have a parcel of land registered under the torrens system. Current law provides that the examiner be paid a minimum of $5.00 for property valued at $5,000 or less and $.50 for each additional $1,000 of assessed value in the land. This archaic fee structure is deleted and places the compensation of the examiner at the discretion of the clerk as with any other property related proceeding. It also allows the recording fees to be that as set out in 161-10. This section also deletes archaic reference to county surveyors. A surveyor's fee in a torrens action would be a private matter between the petitioner and the surveyor. It also deletes reference to sheriff's bonds. The responsibility for collecting taxes on torrenized land is no longer the responsibility of the sheriff.

Section 2 eliminates the requirement that the register of deeds maintain a separate book for registered land. The transfers and certificates would be recorded as any other real estate document and indexed in the consolidated real property indexes. Any transactions involving these properties would be noted on the grantor-grantee index by "registered estate no." so they could easily be identified as a "torrens" property. Section 2 also requires any new transaction noted on the certificate of title to be copied, recorded and indexed.

Section 3 updates the language used in transfers and certificates of title. It also instructs registers on indexing.

Section 4 deals with conveyance of a portion of a registered estate. This change eliminates the requirement of a new survey of the entire original tract and just requires a survey of that portion being transferred.

Section 5 clarifies that in the case of a transfer of a portion of a torrenized tract, the register of deeds is responsible for ensuring the new certificate contains a description of the property being transferred but is not responsible for the accuracy of the legal description.

Section 6 would require the clerk of court, upon request of a lienholder, to certify to the register of deeds any judgment, liens and notices of lis pendens. The register of deeds would then be required to note the lien on the record copy of the certificate of title. Recording of the notice on the record copy would make the encumbrance valid against the registered estate from the time of recordation.

Section 7 changes the method for attachment of tax liens on registered property. Under current law, tax liens attach on registered property only if the collector files a notice of

tax lien with the register of deeds by March 1 of each year. The proposal would change this date to June 30 and require the register of deeds to note the delinquency on the record copy of the certificate of title. The act of noting the delinquency on the record copy would make the tax lien valid from that time forward.

Section 8 repeals GS 43-47, a unique method of sale of registered property for satisfaction of tax liens. The standard tax lien foreclosure method is referenced in Section 9.

Section 9 is rewritten to eliminate an archaic method for sale and distribution of the proceeds of the foreclosure of registered property for taxes or other liens, and references the standard tax lien foreclosure statute.

Section 10 provides that the proposed bill would become effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1020*

Short Title: Safety Professionals. (Public)

Sponsors: Representative Dedmon.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

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 37.

"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional (SP). -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, erogonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5).

(b) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(c) Any person who violates this Article is guilty of a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. 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 whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(e) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article.

"§ 90-648. Exemptions.

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP', 'CSP', or 'SP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional."

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

VISITOR REGISTRATION SHEET DATE APRIL 21, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Cuyrus	Chamber of Com.
Kim Hargrove	Harnett Co. BOD
Elaine Harmon	Lincoln Co. BOD
JERRY GARNER	WAKE CO. NORTH STATE ASSOC 5201 W. OAKS DR. FUQUAY, NC 27526
[illegible]	ASSE
Joe McClees	" "
Arlene Edwards	ASSE
Neale K. Robbins	Dept of Justice
Elizabeth Harris	Child Support
Michelle Cook	Weyerhaeuser
[illegible] Slocum	NC Forestry Assoc.
LE Hartsell	NCBA
Adam Semiq	NCHAC
Pam Seamans	NC Social Services Consortium
Helen Lupina	Mech. Co. Soc. Services
Leanne [illegible]	NCSBA
[illegible]	NCNBA
Tim KENT	American Institute of Architects
Chris Kirkpatrick	Herald-Sun
[illegible]	PPAB

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Thursday, April 22, 1999
ROOM 421 LOB
12:00 PM

CALL TO ORDER

Representative Braswell, Chairman

HB 1020 SAFETY PROFESSIONALS. REP. DEDMON

HB 1096 REGISTER OF DEEDS AMENDS. REP. HILL

HB 1144 NEED CONSENT TO TAPE COMMUNICATION. REP. MICHAUX

HB 1228 RESTORATION OF RIGHTS. REP. ADAMS

HB 1279 IDENTITY FRAUD. REP. WARNER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, APRIL 22, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Emily Driggers and David Guy, II, were introduced to the Committee.

The bills on the agenda were HB 1020, sponsored by Rep. Dedmon, HB 1096, sponsored by Rep. Hill, HB 1144, sponsored by Rep. Michaux, and HB 1228, sponsored by Rep. Warner.

HB 1228 was postponed at the request of the bill sponsor.
HB 1144 was postponed at the request of the bill sponsor.

Rep. Hill was recognized to explain HB 1096, **(Short title: Register of Deeds Amends).** Ann Shaw, Register of Deeds for Randolph County, spoke in support of the bill. Rep. Michaux moved for a favorable report for HB 1096. The Committee gave the bill a favorable report and recommended that the bill be re-referred to the Committee on Finance.

Rep. Warner was recognized to explain HB 1279**(Short title: Identity Fraud).** The Committee had given a similar bill, HB 814, a favorable report at a previous meeting. A subcommittee was appointed to study both bills to see what the similarities were. Rep. Braswell appointed Rep. Hensley as Chair of the subcommittee and Rep. Russell and Rep. Cansler as members.

HB 1020 **(Short title: Safety Professionals).** Rep. Dedmon offered a Proposed Committee Substitute. Rep. Barefoot made a motion that the Proposed Committee Substitute be brought before the Committee. Staff member, Robin Johnson, also explained the bill. Rep. Braswell advised that the Committee would not vote on the bill today and that it would be placed on the agenda for the next meeting. A representative of the American Society of Safety Engineers spoke in support of this bill. Joe McCless of McCless Consulting also answered questions posed by the Committee Members. After further discussion by the committee members, the Chair suggested that the discussion of this bill be continued at the next meeting.

The meeting was adjourned.

Members present:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Crawford	Rep. Hensley
Rep. Jarrell	Rep. Russell	Rep. Sherrill

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1228

Short Title: Restoration of Rights. (Public)

Sponsors: Representatives Adams; Blue, Fitch, Hardaway, Hunter, McAllister, and Womble.

Referred to: Judiciary II.

April 15, 1999

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, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1144

Short Title: Need Consent to Tape Communication. (Public)

Sponsors: Representative Michaux.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RECORDING OF COMMUNICATIONS WITHOUT CONSENT.

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:

"**§ 14-394.1. No recording of communications without consent.**

(a) Every person who, intentionally and without the express consent of all parties to a communication, by means of any electronic or other recording device, records any communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, is guilty of a Class I felony.

(b) Any person whose communications, whether the communications are carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, is recorded intentionally and without the express consent of all parties to the communication, may in a civil action recover from the person who recorded such communications such relief as may be appropriate, including a reasonable attorney's fee and other litigation costs incurred.

(c) The term 'communication' includes any oral or spoken communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, regarding or relating to the transaction of interstate or intrastate commerce, regardless of whether for profit or otherwise.

(d) This section does not apply to any telephonic communication system used for communication exclusively with a State, county, city and county, or city correctional facility.

(e) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance or monitoring of any conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, or any suspected fraudulent scheme, conduct, or activity involving violation of law or pattern of practice threatening to adversely affect the public health and safety."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1144:
Need Consent to Tape Communication

BILL ANALYSIS

Committee: House Judiciary II
Date: April 22, 1999
Version: First Edition

Introduced by: Representative Michaux
Summary by: Robin S. Johnson
Committee Counsel

SUMMARY: House Bill 1144 would make it a Class I felony for any person to record any communication. The recording must be made intentionally and without the express consent of all parties to any oral or spoken communication. The communication may be among the parties in the presence of one another or by telegraph, telephone, two-way radio, or other device. The bill specifically provides that it would not apply to any telephonic communication system used exclusively with a correctional facility. It also provides that it would not impair or limit any otherwise lawful activities of law enforcement personnel or governmental employees during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity.

A person whose communication is recorded intentionally and without the consent of all parties would be authorized to seek appropriate relief, including reasonable attorney's fees and other costs, in a civil action against the person who recorded the communication.

The bill would become effective December 1, 1999, and would apply to offenses committed on or after that date.

CURRENT LAW: Current State law makes it a Class H felony for a person to record a communication without the consent of at least one party to the communication. A variety of entities are exempt from this law that governs electronic surveillances.

H1144-SMRH-001

ARTICLE 16.
Electronic Surveillance.

Sec.

15A-286. Definitions.
15A-287. Interception and disclosure of wire, oral, or electronic communications prohibited.
15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.
15A-289. Confiscation of wire, oral, or electronic communication interception devices.
15A-290. Offenses for which orders for electronic surveillance may be granted.
15A-291. Application for electronic surveillance order; judicial review panel.
15A-292. Request for application for electronic surveillance order.
15A-293. Issuance of order for electronic surveillance; procedures for implementation.
15A-294. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.
15A-295. Reports concerning intercepted wire, oral, or electronic communications.
15A-296. Recovery of civil damages authorized.
15A-297. Conformity to provisions of federal law.
15A-298. Subpoena authority.

§ 15A-286. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(2) "Attorney General" means the Attorney General of the State of North Carolina, unless otherwise specified.

(3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(4) "Chapter 119 of the United States Code" means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.

(5) "Communications common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of Title 47 of the United States Code.

(6) "Contents" when used with respect to any wire, oral, or electronic communication means and includes any information concerning the substance, purport, or meaning of that communication.

(7) "Electronic, mechanical, or other device" means any device or apparatus which can be

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used to intercept a wire, oral, or electronic communication other than:

a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(8) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:

a. Any wire or oral communication;

b. Any communication made through a tone-only paging device; or

c. Any communication from a tracking device (as defined in section 3117 of Title 18 of the United States Code).

(9) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(10) "Electronic communication system" means any wire, radio, electronic, magnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the storage of such communications.

(11) "Electronic surveillance" means the interception of wire, oral, or electronic communications as provided by this Article.

(12) "Electronic storage" means:

a. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

b. Any storage of such communication by an electronic communication service for the purposes of backup protection of the communication.

(13) "Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device.

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(14) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof, who is empowered by the laws of this State to conduct investigations of or to make arrests for offenses enumerated in G.S. 15A-290, and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.

(15) "Judge" means any judge of the trial divisions of the General Court of Justice.

(16) "Judicial review panel" means a three-judge body, composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice.

(17) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.

(18) "Person" means any employee or agent of the United States or any state or any political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

(19) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

a. Scrambled or encrypted;

b. Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

c. Carried on a subcarrier or other signal subsidiary to a radio transmission;

d. Transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

e. Transmitted on frequencies allocated under Part 25, Subpart D, E, or F or Part 94 of the Rules of the Federal Communications Commission as provided by 18 U.S.C. § 2510(16)(E).

(20) "User" means any person or entity who:

a. Uses an electronic communications service; and

b. Is duly authorized by the provider of the service to engage in the use.

(21) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or

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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.

(1995, c. 407, s. 1; 1997-435, s. 1.)

Editor's Note. - Session Laws 1995, c. 407, s. 3, made this Article effective December 1, 1995.

Effect of Amendments. - The 1997 amendment, effective August 28, 1997, and applicable to all applications filed on or after that date, deleted "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" from the end of subdivision (21).

§ 15A-287. Interception and disclosure of wire, oral, or electronic communications prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if, without the consent of at least one party to the communication, the person:

(1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.

(2) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

a. The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communications; or

b. The device transmits communications by radio, or interferes with the transmission of such communications.

(3) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through violation of this Article; or

(4) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Article.

(b) It is not unlawful under this Article for any person to:

(1) Intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) Intercept any radio communication which is transmitted:

a. For use by the general public, or that relates to ships, aircraft, vehicles, or persons in

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distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communication system, including police and fire, readily available to the general public;

c. By a station operating on any authorized band within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communication system; or

(3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.

(c) It is not unlawful under this Article for an operator of a switchboard, or an officer, employee, or agent of a provider of electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, provided that a provider of wire or electronic communication service may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony.

(f) Any person who shall, knowingly or with gross negligence, divulge the existence of or contents of any electronic surveillance order in a way likely to hinder or thwart any investigation or prosecution relating to the subject matter of the electronic surveillance order or anyone who shall, knowingly or with gross negligence, release the contents of any wire, oral, or electronic communication intercepted under an electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as is required or allowed by law, shall be guilty of a Class 1 misdemeanor.

(g) Any public officer who shall violate subsection (a) or (d) of this section or who shall knowingly violate subsection (e) of this section shall be removed from any public office he may

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hold and shall thereafter be ineligible to hold any public office, whether elective or appointed.

(1995, c. 407, s. 1.)

§ 15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if the person:

(1) Manufactures, assembles, possesses, purchases, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(2) Places in any newspaper, magazine, handbill, or other publication, any advertisement of:

a. Any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

b. Any other electronic, mechanical, or other device where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(b) It is not unlawful under this section for the following persons to manufacture, assemble, possess, purchase, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications:

(1) A communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, acting in the normal course of the communications common carrier's business, or

(2) An officer, agent, or employee of, or a person under contract with, the State, acting in the course of the activities of the State, and with the written authorization of the Attorney General.

(c) An officer, agent, or employee of, or a person whose normal and customary business is to design, manufacture, assemble, advertise and sell electronic, mechanical and other devices primarily useful for the purpose of the surreptitious interceptions of wire, oral, or electronic communications, exclusively for and restricted to State and federal investigative or law enforcement agencies and departments.

(1995, c. 407, s. 1.)

§ 15A-289. Confiscation of wire, oral, or electronic communication interception devices.

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Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of G.S. 15A-288 may be seized and forfeited to this State.

(1995, c. 407, s. 1.)

§ 15A-290. Offenses for which orders for electronic surveillance may be granted.

(a) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception:

(1) May provide or has provided evidence of the commission of, or any conspiracy to commit:

a. Any of the drug-trafficking violations listed in G.S. 90-95(h); or

b. A continuing criminal enterprise in violation of G.S. 90-95.1.

(2) May expedite the apprehension of persons indicted for the commission of, or any conspiracy to commit, an offense listed in subdivision (1) of this subsection.

(b) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.

(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or G.S. 14-202.1 (Taking indecent liberties with children).

(2) Any felony obstruction of a criminal investigation, including any violation of G.S. 14-221.1 (Altering, destroying, or stealing evidence of criminal conduct).

(3) Any felony offense involving interference with, or harassment or intimidation of, jurors or

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witnesses, including any violation of G.S. 14-225.2 or G.S. 14-226.

(4) Any felony offense involving assault or threats against any executive or legislative officer in violation of Article 5A of Chapter 14 of the General Statutes or assault with a firearm or other deadly weapon upon governmental officers or employees in violation of G.S. 14-34.2.

(5) Any offense involving the manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapons of mass death or destruction in violation of G.S. 14- 288.8 or the adulteration or misbranding of food, drugs, cosmetics, etc., with the intent to cause serious injury in violation of G.S. 14-34.4.

(d) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in G.S. 15A-294(a) and (b). Such contents and any evidence derived therefrom may be used in accordance with G.S. 15A-294(c) when authorized or approved by a judicial review panel where the panel finds, on subsequent application made as soon as practicable, that the contents were otherwise intercepted in accordance with this Article or Chapter 119 of the United States Code.

(e) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this Article or Chapter 119 of the United States Code, shall lose its privileged character.

(1995, c. 407, s. 1.)

§ 15A-291. Application for electronic surveillance order; judicial review panel.

(a) The Attorney General 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 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 upon the notification of the Attorney General's Office of 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

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made by the Attorney General or the Attorney General's designee. The Attorney 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

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(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel.

(1995, c. 407, s. 1; 1997-435, s. 2.)

Effect of Amendments. - The 1997 amendment, effective August 28, 1997, and applicable to all applications filed on or after that date, in subsection (a) inserted "or the Attorney General's designee", inserted "or an Associate Justice acting as the Chief Justice's designee", substituted "or an Associate Justice acting as the Chief Justice's designee upon the notification of the Attorney General's Office of the" for "pursuant the the Attorney General's written notification of his"; and in subsection (b) inserted "or the Attorney General's designee" three times.

§ 15A-292. Request for application for electronic surveillance order.

(a) The head of any municipal, county, or State law enforcement agency or any district attorney may submit a written request to the Attorney General that the Attorney General apply to a judicial review panel for an electronic surveillance order to be executed within the requesting agency's jurisdiction. The written requests shall be on a form approved by the Attorney General and shall provide sufficient information to form the basis for an application for an electronic surveillance order. The head of a law enforcement agency shall also submit a copy of the request to the district attorney, who shall review the request and forward it to the Attorney General along with any comments he may wish to include. The Attorney General is authorized to review the request and decide whether it is appropriate to submit an application to a judicial review panel for an electronic surveillance order. If a request for an application is deemed inappropriate, the Attorney General shall send a signed, written statement to the person submitting the request, and to the district attorney, summarizing the reasons for failing to make an application. If the Attorney General decides to submit an application to a judicial review panel, he shall so notify the requesting agency head, the district attorney, and the head of the local law enforcement agency which has the primary responsibility for enforcing the criminal laws in the location in which it is anticipated the majority of the surveillance will take place, if not the same as the requesting agency head, unless the Attorney General has probable cause to believe that the latter notifications should substantially jeopardize the success of the surveillance or the investigation in general. If a judicial review panel grants an electronic surveillance order, a copy of such order shall be sent to the requesting agency head and the district attorney, and a summary of the order shall be sent to the head of the local law enforcement agency with primary responsibility for enforcing the criminal laws in the jurisdiction where the majority of the surveillance will take

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place, if not the same as the requesting agency head, unless the judicial review panel finds probable cause to believe that the latter notifications would substantially jeopardize the success of the surveillance or the investigation.

(b) This Article does not limit the authority of the Attorney General to apply for electronic surveillance orders independent of, or contrary to, the requests of law enforcement agency heads, nor does it limit the discretion of the Attorney General in determining whether an application is appropriate under any given circumstances.

(c) The Chief Justice of the North Carolina Supreme Court shall receive a report concerning each decision of a judicial review panel.

(1995, c. 407, s. 1.)

§ 15A-293. Issuance of order for electronic surveillance; procedures for implementation.

(a) Upon application by the Attorney General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection.

(b) Each order authorizing the interception of any wire, oral, or electronic communications must specify:

(1) The identity of the person, if known, whose communications are to be intercepted;

(2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions may be made;

(3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

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(4) The identity of the agency authorized to intercept the communications and of the person requesting the application; and

(5) The period of time during which such interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained.

(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension may be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than 15 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days or 15 days, as is appropriate.

(d) Whenever an order authorizing interception is entered pursuant to this Article, the order may require reports to be made to the issuing judicial review panel showing that progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports must be made at such intervals as the panel may require.

(1) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this Article must be recorded on tape, wire, or electronic or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection must be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings must be made available to the judicial review panel and sealed under its direction. Custody of the recordings is wherever the panel orders. They may not be destroyed except upon an order of the issuing panel and in any event must be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of G.S. 15A-294(a) and (b) for investigations. The contents of any wire, oral, or electronic communication or evidence derived therefrom may not be disclosed or used under G.S. 15A-294(c) unless they have been kept sealed.

(2) Applications made and orders granted under this Article must be sealed by the panel. Custody of the applications and orders may be disclosed only upon a showing of good cause before the issuing panel and may not be destroyed except on its order and in any event must be kept for 10 years.

(3) Any violation of the provisions of this subsection may be punished as for contempt.

(e) The State Bureau of Investigation shall own or control and may operate any equipment

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used to implement electronic surveillance orders issued by a judicial review panel and may operate or use, in implementing any electronic surveillance order, electronic surveillance equipment in which a local government or any of its agencies has a property interest.

(f) The Attorney General shall establish procedures for the use of electronic surveillance equipment in assisting local law enforcement agencies implementing electronic surveillance orders. The Attorney General shall supervise such assistance given to local law enforcement agencies and is authorized to conduct statewide training sessions for investigative and law enforcement officers regarding this Article.

(1995, c. 407, s. 1; 1997-435, s. 2.1.)

Effect of Amendments. - The 1997 amendment, effective August 28, 1997, and applicable to all applications filed on or after that date, inserted "pursuant to the procedures in G.S. 15A-291" in subsection (a).

§ 15A-294. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.

(a) Any investigative or law enforcement officer who, by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer, who by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of the officers' official duties.

(c) Any person who has received, by any means authorized by this Article or Chapter 119 of the United States Code, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom, intercepted in accordance with the provisions of this Article, may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding in any court or before any grand jury in this State, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

(d) Within a reasonable time, but no later than 90 days after the filing of an application for an order or the termination of the period of an order or the extensions thereof, the issuing judicial review panel must cause to be served on the persons named in the order or the application and such other parties as the panel in its discretion may determine, an inventory that includes notice of:

(1) The fact of the entry of the order or the application;

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(2) The date of the entry and the period of the authorized interception; and

(3) The fact that during the period wire, oral, or electronic communications were or were not intercepted.

(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.

(e) The issuing judicial review panel, upon the filing of a motion, may in its discretion, make available to such person or his counsel for inspection, such portions of the intercepted communications, applications, and orders as the panel determines to be required by law or in the interest of justice.

(f) The contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this State unless each party, not less than 20 working days before the trial, hearing, or other proceeding, has been furnished with a copy of the order and accompanying application, under which the interception was authorized.

(g) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

(1) The communication was unlawfully intercepted;

(2) The order of authorization under which it was intercepted is insufficient on its face; or

(3) The interception was not made in conformity with the order of authorization.

Such motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of this motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived therefrom, must be treated as having been obtained in violation of this Article.

(h) In addition to any other right to appeal, the State may appeal:

(1) From an order granting a motion to suppress made under subdivision (1) of this subsection, if the district attorney certifies to the judge granting the motion that the appeal is not taken for purposes of delay. The appeal must be taken within 30 days after the date the order of suppression was entered and must be prosecuted as are other interlocutory appeals; or

(2) From an order denying an application for an order of authorization, and the appeal may be

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made ex parte and must be considered in camera and in preference to all other pending appeals.

(1995, c. 407, s. 1; 1997-435, s. 3.)

Effect of Amendments. - The 1997 amendment, effective August 28, 1997, and applicable to all applications filed on or after that date, added subsection (d1).

§ 15A-295. Reports concerning intercepted wire, oral, or electronic communications.

In January of each year, the Attorney General of this State must report to the Administrative Office of the United States Court the information required to be filed by section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended, and file a copy of the report with the Administrative Office of the Courts of North Carolina.

(1995, c. 407, s. 1.)

§ 15A-296. Recovery of civil damages authorized.

(a) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this Article, has a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and is entitled to recover from any other person:

(1) Actual damages, but not less than liquidated damages, computed at the rate of one hundred dollars ($100.00) a day for each day of violation or one thousand dollars ($1,000), whichever is higher;

(2) Punitive damages; and

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or on a representation made by the Attorney General or a district attorney is a complete defense to any civil or criminal action brought under this Article.

(1995, c. 407, s. 1.)

§ 15A-297. Conformity to provisions of federal law.

It is the intent of this Article to conform the requirements of all interceptions of wire, oral, or electronic communications conducted by investigative or law enforcement officers in this State to provisions of Chapter 119 of the United States Code, except where the context indicates a purpose to provide safeguards even more protective of individual privacy and constitutional rights.

(1995, c. 407, s. 1.)

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§ 15A-298. Subpoena authority.

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or 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 toll records or subscriber information; and

(2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation.

(1995, c. 407, s. 1; 1997-435, s. 4.)

Effect of Amendments. - The 1997 amendment, effective August 28, 1997, and applicable to all applications filed on or after that date, substituted "the Director's" for "his"; and substituted "local or long-distance toll" for "telephone toll billing" in subdivision (1).

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1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 1096 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1096

Short Title: Register of Deeds Amends. (Public)

Sponsors: Representatives Hill; and Redwine.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE QUALITY OF DOCUMENTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-54.3(b) reads as rewritten:

"(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to the following aspects of land records management:

(1) Uniform indexing of land records;

(2) Uniform recording and indexing procedures for maps, plats and condominiums; ~~and~~

(2a) Uniform recording standards for land records; and

(3) Security and reproduction of land records."

Section 2. G.S. 147-54.3(b1) reads as rewritten:

"(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing and recording standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards adopted shall be posted in the office of the register of deeds in each county of the State."

Section 3. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

. . .

(19) Nonstandard document. -- For registering a land records document not in compliance with the recording standards adopted pursuant to G.S. 147-54.3(b1) thirty dollars ($30.00), in addition to all other applicable recording fees."

Section 4. G.S. 161-14 reads as rewritten:

"**§ 161-14. Registration of instruments.**

(a) ~~The~~ After the register of deeds determines that all statutory requirements for registration have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

(b) The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

~~(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall endorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner.~~"

Section 5. This act is effective when it becomes law.

HOUSE BILL 1096:
Register of Deeds Amendments

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: April 22, 1999
Version: 1

Introduced by: Representative Hill
Summary by: Steven Rose
Committee Counsel

House Bill 1096 authorized the Secretary of State to establish standards for the recording of land records. It removes the requirement that instruments presented for registration be on paper and in ink of photographic reproduction quality. It establishes a recording fee for nonstandard documents. The act is effective when it becomes law.

House Bill 1096 amends G.S. 147-54.3(b) by authorizing the Secretary of State, in cooperation with the Secretary of Cultural Resources, to establish minimum standards and provide technical assistance regarding the uniform recording of land records. Such authority already exists with regard to indexing of land records, recording and indexing of plats, and security and reproduction of land records.

Section 2 amends G.S. 147-54.3(b1). Subsection (b1) currently allows the Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds and the Real Property Section of the North Carolina Bar Association, to adopt rules specifying the minimum indexing standards for Registers of Deeds. The amendment allows the adoption of rules regarding recording standards, as well.

Section 3 amends G.S. 161-10(a) which specifies the fees charged by the Register of Deeds. The amendment adds a subdivision specifying the fee for a nonstandard land records document. That fee is $30, in addition to other applicable recording fees. Nonstandard means a land record documents not in compliance with the recording standards adopted pursuant to G.S. 147-54.3(b1).

Section 4 amends G.S. 161-14, which specifies the duties of the Register of Deeds with regard to registration of instruments. It adds a requirement that the Register of Deeds determine that all statutory requirements for registration have been met. The amendment also removes the requirement that instruments presented for registration be on paper and in ink of the type that will permit the reproduction of the instruments by photographic or microphotographic processes. The subsection being repealed also specifies that if an instrument does not meet those requirements, it will be recorded after the Register of Deeds endorses a notation that the record is of poor quality because of the condition of the original document.

The act is effective when it becomes law.

H1096-SMRL-001

neering, and culture. Until such time as the North Carolina Register of Historic Places is established, all references to it in the General Statutes and in the rules adopted pursuant to it shall be construed to mean properties and districts in North Carolina that are listed in the National Register of Historic Places.

(b) The North Carolina Historical Commission shall establish criteria for properties to be included in the State Register of Historic Places, and, within such criteria, shall provide for levels of significance as necessary and appropriate.

(c) The North Carolina Historical Commission shall promulgate regulations requiring that before any property or district may be included on the North Carolina Register of Historic Places, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the North Carolina Register until such objection has been withdrawn. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property. (1989, c. 60.)

§ 121-5. Public records and archives.

(a) State Archival Agency Designated. — The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government.

(b) Destruction of Records Regulated. — No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources, except as provided in G.S. 130A-99. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authori-

zation shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine.

(c) Assistance to Public Officers. — The Department of Cultural Resources shall have the right to examine into the condition of public records and shall, subject to the availability of staff and funds, give advice and assistance to public officials and agencies in regard to preserving or disposing of the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which inventory shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Department of Cultural Resources, establishing a time period for the retention or disposal of each series of records. So long as such approved schedule remains in effect, destruction or disposal of records in accordance with its provisions shall be deemed to have met the requirements of G.S. 121-5(b).

The Department of Cultural Resources is hereby authorized and directed to conduct a program of inventorying, repairing, and microfilming in the counties for security purposes those official records of the several counties which the Department determines have permanent value, and of providing safe storage for microfilm copies of such records. Subject to the availability of funds, such program shall be extended to the records of permanent value of the cities, municipalities, and other subdivisions of government.

(d) Preservation of Permanently Valuable Records. — Public records certified by the Department of Cultural Resources as being of permanent value shall be preserved in the custody of the agency in which the records are normally kept or of the North Carolina State Archives. Any State, county, municipal, or other public official is hereby authorized and empowered to turn over to the Department of Cultural Resources any State, county, municipal, or other public records no longer in current official use, and the Department of Cultural Resources is authorized in its discretion to accept such records, and having done so shall provide for their administration and preservation in the North Carolina State Archives. When such records have been thus surrendered, photocopies, microfilms, typescripts, or other copies of them shall be made and certified under seal of the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department of Cultural Resources; and the Department may charge reasonable fees for such copies. The Department may answer written inquiries for nonresidents of North Carolina and for such service charge a search and handling fee not to exceed ten dollars ($10.00), the receipts from which fee shall be used to defray the cost of providing such service. (1907, c. 714, s. 5; C.S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1; 1959, c.

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Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

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preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled. (1935, c. 265, s. 8; 1943, c. 237; 1959, c. 68, s. 2; 1973, c. 476, s. 48.)

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

§ 132-8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government. (1961, c. 1041; 1973, c. 476, s. 48.)

§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government

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of Publications; duties.

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reasonable; the proceeds of sale shall be paid into the State treasury.

The Division shall also perform all such other duties as may be assigned by the Secretary of State. (1915, c. 202, ss. 1, 2; C.S., ss. 6147, 6148; 1939, c. 316; 1971, c. 685, s. 3; 1977, c. 802, s. 50.31.)

§ 147-54.2: Repealed by Session Laws 1979, c. 477, s. 2.

§ 147-54.3. Land records management program.

(a) The Secretary of State shall administer a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b) through (e) of this section, and other related activities essential to the effective conduct of the management program.

(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to the following aspects of land records management:

(1) Uniform indexing of land records;

(2) Uniform recording and indexing procedures for maps, plats and condominiums; and

(3) Security and reproduction of land records.

(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards adopted shall be posted in the office of the register of deeds in each county of the State.

(c) The Secretary of State shall conduct a program for the preparation of county base maps pursuant to standards prepared by the Secretary.

(c1) The Secretary of State, shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county cadastral maps pursuant to standards prepared by the Secretary of State.

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make nonbinding recommendations to the board, the register of deeds, and to the General Assembly.

(d1) The Secretary of State shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the Secretary of State shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county.

(e) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

(1) Centralized recording systems;
(2) Filming, filing, and recording techniques and equipment;
(3) Computerized land records systems; and
(4) Storage and retrieval of land records.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Secretary of State shall appoint 12 members to the committee; one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

(1) The North Carolina Association of Assessing Officers;
(2) The North Carolina Section of the American Society of Photogrammetry;
(3) The North Carolina Chapter of the American Institute of Planners;
(4) The North Carolina Section of the American Society of Civil Engineers;
(5) The North Carolina Property Mappers' Association;
(6) The North Carolina Association of Registers of Deeds;
(7) The North Carolina Bar Association;
(8) The North Carolina Society of Land Surveyors; and
(9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Secretary of State shall appoint the chairman, and the committee shall meet at the call of the chairman. The Secretary of State in making the appointments shall try to achieve geographical and population balance on the advisory committee; one third of the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5. (1977, c. 771, s. 4; c. 932, s. 1; 1985, c. 479, s. 165(d), (e); 1987, c. 738, s. 158(a); 1989, c. 523, s. 8; c. 727, ss. 169, 218(116a); c. 751, s. 14; 1991, c. 689, ss. 181(b), 181(c); c. 697, s. 1; 1993, c. 258, s. 1.)

Editor's Note. — This section was formerly § 143-345.6. It was recodified as § 147-54.3 by Session Laws 1991, c. 689, s. 181(b).

Session Laws 1991, c. 689, s. 181(a) provides: "The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of Environment, Health, and Natural Resources to conduct the land records management program, as provided by G.S. 143-345.6 [now this section], is transferred to the Department of the Secretary of State."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

§ 147-54.4. (For grandfat tor's Note) Ce ment proper

(a) Definitions. — The followi
(1) Department. — The Dep
(2) Large-scale. — A scale more than 400 feet.
(3) Local government. — A and a city as defined i
(4) Property mapper. — A p government and is resp ing large-scale cadastra

(b) Certification. — The Depa tion program for property mappe to protect and enhance the State large-scale cadastral maps. To be applicant must meet the followin additional requirements set by
(1) Be at least 18 years old
(2) Hold a high school diplo
(3) Achieve a passing score by the Department cove
a. The principles and t
b. The laws of North Ca praisal, and assessm

The Department shall establish a property mapper that are in ad ments. The additional requireme who is certified as a property ma essary to create and maintain lar lishing these additional requirem with the advisory committee o 147-54.3(f), the North Carolina P other relevant professional grou may include mapping experience nation administered by the Dep

(c) Renewal. — A certification renewed every two years. Atten education approved by the Depart a certification. The Department s ceptable for meeting this contin

(d) Application and Fees. — A property mapper or renewal of ce must file an application with the

ctment of consolidation; ıc s.

ıctment. — Following ratification
authorizing consolidation, there
)aper of general circulation in the
and, if applicable, the fact that in
there is an assumption by the
)t secured by a pledge of faith and
l, if applicable, assumption of the
sued debt secured by a pledge of
ting city and that there is also
unty the debt secured by a pledge
ıd, if applicable, there is vested in
right to issue authorized but
: of faith and credit of the county
:nded:
ding challenging the regularity or
tment must be begun within 30
f publication of this notice."
the governing bodies of the units
applicable, the interim governing
ty by their respective clerks or by
designated by each applicable

esting Validity of Enactment of
oceeding in any court to set aside
idation by the General Assembly,
:he grounds that the enactment is
l, must be begun within 30 days
ice e enactment. After the
io right of action or defense
actment or any irregularity in the
hall the validity of the enactment
)on any grounds whatever, except
within the period of limitation
461, s. 4; 1995 (Reg. Sess., 1996),

section (a), substituted "enactment" for "referendum", and substituted "notice" for "statement of result".

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Sec.
161-10. Uniform fees of registers of deeds.
161-11.1. Fees for Children's Trust Fund.

Article 2.

The Duties.

161-14. Registration of instruments.
161-22. Index of registered instruments.
161-22.2. Parcel identifier number indexes.
161-27. Register of deeds failing to discharge duties; penalty.

Article 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

161-50.3. Disbursements.
161-50.4. Eligibility.
161-50.5. Benefits.

ARTICLE 1.

The Office.

§ 161-5. Vacancy in office.

Local Modification. — Beaufort: 1997-248, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 161-10. Uniform fees of registers of deeds.

(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction

thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. — For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed

from time to time, but t
times be prominently p
(12) Notarial Acts. — For t
affirmation or performi
mum fee set in G.S. 10A
the act is performed as
which a fee is provided
fee shall be charged in
filing, or recording inst
subdivisions (1) and (3)
(13) Uniform Commercial C
for in Chapter 25, Article
(14) Torrens Registration. —
43-5.
(15) Master Forms. — Such
ments in general.
(16) Probate. — For certificat
as provided in G.S. 47-1
(17) Qualification of Notary
oaths of office to a notary
ate record entries as pr
($5.00).
(18) Reinstatement of Articl
reinstatements of Articles
ant to G.S. 105-232; such
in general. The fee shall b

(b) The uniform fees set forth
exclusive and no other fees shall b

(c) These fees shall be collecte
registration, recordation, certificat
the register of deeds unless by la
shall be rendered without charge.
c. 283; 1891, c. 324; 1897, cc. 27, 6
261, 302, 578, 723; 1901, c. 294; 19
Rev., s. 2776; 1911, c. 55, s. 3; C.S.,
s. 33; 1969, c. 80, s. 1; c. 912, s. 3;
428; 1977, 2nd Sess., c. 1132; 1981
2, 3; 1987, c. 792, ss. 2-5; 1989, c. 5
s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1
s. 1; 1997-309, s. 9.)

Editor's Note. —
Session Laws 1993, c. 425, s. 1, which amended this section, became effective October 1, 1993, and applied to fees collected and entries made on or after that date.

§ 161-11.1. Fees for Childr

(a) Five dollars ($5.00) of each fe
on or after October 1, 1983, for i
pursuant to G.S. 161-10(a)(2) shall
cal but no later than 60 days after co
to the county finance officer, who s
Treasurer for deposit in the Childre

from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1; 1997-309, s. 9.)

Editor's Note. — Session Laws 1993, c. 425, s. 1, which amended this section, became effective October 1, 1993, and applied to fees collected and entries made on or after that date.

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, substituted "twenty-one dollars ($21.00) per sheet or page" for "nineteen dollars ($19.00)" in subdivision (a)(3).

§ 161-11.1. Fees for Children's Trust Fund.

(a) Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1279
Committee Substitute Favorable 4/27/99
Senate Judiciary I Committee Substitute Adopted 6/30/99
Fourth Edition Engrossed 7/1/99

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO ALLOW FOR THE RECOVERY OF DAMAGES FOR FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

(a) A person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.
(2) Drivers license numbers.
(3) Checking account numbers.

(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

(c) It shall not be a violation under this section for a person to do any of the following:

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

"**§ 14-113.21. Venue of offenses.**

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.22. Punishment and liability.**

(a) A violation of G.S. 14-113.20 is punishable as a Class H felony, except if the victim suffers arrest, detention, or conviction as a proximate result of the offense, then the violation is punishable as a Class G felony.

(b) Notwithstanding subsection (a) of this section, any person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences, shall be liable to the other person for civil damages of up to five thousand dollars ($5,000) for each incident, or three times the amount of actual damages, if any, sustained by the person damaged, whichever amount is greater. A person damaged as set forth in this subsection may also institute a civil action to enjoin and restrain future acts which would constitute a violation of this subsection. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the prevailing party.

(c) In any case in which a person obtains identifying information of another person in violation of G.S. 14-113.20, uses that information to commit a crime in addition to a violation of G.S. 14-113.20, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

"**§ 14-113.23. Authority of the Attorney General.**

The Attorney General may investigate any complaint regarding financial identity fraud under this Article. In conducting these investigations, the Attorney General has

all the investigative powers available to the Attorney General under Article 1 of Chapter 75 of the General Statutes. The Attorney General shall refer all cases of financial identity fraud under G.S. 14-113.20 to the district attorney in the county where the crime was deemed committed in accordance with G.S. 14-113.21."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1279: Identity Fraud.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Warner
Date:	April 22, 1999	**Summary by:**	Robin S. Johnson
Version:	1st Edition		Committee Counsel

SUMMARY: The bill would create a new Class I felony—identity fraud. It would be unlawful for a person to knowingly and willfully (i) obtain or record identifying information that can be used to access the financial resources of another or (ii) access or attempt to access another person's financial resources by using that person's identifying information. These acts must be done without the other person's authorization or consent. In addition, the defendant must take these actions with the intent to unlawfully appropriate the financial resources of the other person. The offense would be committed in any county where part of the offense occurred, even if the defendant was never actually present in that county.

Identifying information would be defined as names, addresses, phone numbers, social security numbers, drivers license numbers, financial institutions' account numbers, credit and debit card numbers, PIN numbers, electronic signatures, maiden names, employer assigned identification numbers, and other numbers or information that can be used to access a person's financial resources.

The bill would also authorize the Attorney General to investigate and prosecute these claims. The Attorney General also could refer criminal prosecutions to the district attorney in the county where the crime is committed.

Finally, the bill would provide for a notation to be made in court records when someone obtains another's identifying information and uses it to commit a crime in addition to this crime. If that person is convicted of the additional crime, then the court records must reflect that the one whose identity was falsely used to commit the crime did not commit the crime.

House Bill 1279 would become effective December 1, 1999, and would apply to offenses committed and violations occurring on or after that date.

BACKGROUND: According to a recent NCSL brief (see attached), financial identity fraud or identity theft is one of the country's fastest growing crimes. At least 10 states have enacted this type of legislation since 1996. Some are misdemeanors; some are felonies. Also, in 1998, Congress enacted a similar federal law called the Identity Theft Protection Act.

This bill is very similar to House Bill 814 (Financial Identity Fraud), which received a favorable report from this committee. HB 814 would create a Class H felony; would not authorize civil damages; would not define "identifying information" to include name, address, phone number, employer-assigned identification number, or maiden name; would not provide for investigation and prosecution by the Attorney General; would specifically exclude from the offense certain lawful acts of obtaining another person's financial information and financial resources; and would not provide for a notation in court

records that reflects that a person whose identity was falsely used to commit the crime did not commit the crime.

BILL ANALYSIS: The bill would create a new crime. There are existing criminal statutes, which could encompass the elements of identity fraud. These other laws include the Financial Transaction Card Crime Act (see attached), the unauthorized use of credit devices (see attached), and obtaining property by false pretenses. Identity fraud would be different in that it would allow for prosecution when someone takes or copies another person's identifying information with the intent to defraud that person, even if he or she does not get to the next step of appropriating or attempting to appropriate the other's financial resources.

The bill would make identity fraud a Class I felony. Restitution also may be ordered. In addition, a person whose identifying information is fraudulently used may seek an injunction and civil damages of up to $5,000 for each violation or three times the amount of actual damages, whichever is greater. The existing laws cited in the previous paragraph are classified as Class 2 misdemeanors and Class G or Class H felonies. Restitution also may be ordered upon conviction of some of these applicable crimes.

The presumptive required minimum months' punishment for a Class I felon, with no prior record, is 4-6 months community punishment. In addition to being punished as a Class I felony, the bill would allow the court to order a defendant convicted of identity fraud to make restitution to any victims. It would also allow the injured party to file a civil action for injunctive relief and for damages up to $5,000 for each violation or three times the amount of actual damages, if any, whichever is greater.

H1279-SMRH-001

NCSL · LEGISBRIEF

February 1999 Vol. 7, No. 8

IDENTITY THEFT

By Rita Thaemert

It's one of the fastest growing crimes in the nation. And it's so simple: A thief obtains your Social Security number (SSN) or arms himself with a blank, preapproved credit application. Or he can pose as a loan officer and request credit reports with account numbers. Once he gets the information, the identity thief can open new accounts or establish lines of credit in your name. But forget the credit application and account numbers, your SSN unlocks a goldmine—educational, medical, financial and credit records. Unfortunately, victims (thousands a year) don't even know they've been robbed until they get outrageous charges on their credit card statements or a bad credit report. Some states and the federal government have taken steps to slow down the thieves.

State Actions

At least 10 states have enacted some form of identity theft legislation.

At least 10 states have enacted some form of identity theft legislation—Arizona, California, Georgia, Kansas, Mississippi, Missouri, Montana, New Jersey, West Virginia and Wisconsin. The first law passed in Arizona in 1996 reads, "A person commits 'taking the identity of another person' if the person knowingly takes the name, birth date or Social Security number of another person, without the consent of that other person, with the intent to obtain or use the other person's identity for any unlawful purpose or to cause loss to a person. Taking the identity of another person is a class 5 felony."

Recently California added a possible felony to its already existing misdemeanor charge for identity theft. The new law also says that court records must reflect the innocence of a person whose identity was falsely used.

Georgia passed the Personal Financial Security Act that defines the criminal offense of financial identity fraud, provides penalties, authorizes the attorney general to prosecute cases and repeals conflicting related laws. In addition to imprisonment, a person found guilty of financial identity fraud in Georgia may be ordered by the court to make restitution to victims.

Kansas law specifies that misuse of another's identification documents or personal identification numbers for economic benefit is a class A misdemeanor. It's a class B misdemeanor in Missouri to practice identity deception or fraud on an application for certification or licensure as a state certified real estate appraiser. Montana also applies a misdemeanor charge if bribery, theft or misrepresentation of identity are used to obtain health care information.

Identity Theft Laws

	Misdemeanor	Felony	Restitution	Nonfinancial Fraud	Credit Industry
Arizona	X	X			
California	X	X			
Colorado					X
Georgia	X		X		
Kansas	X			X	
Mississippi	X				
Missouri	X			X	
Montana	X				
New Jersey	X				X
West Virginia	X	X			
Wisconsin	X		X		
Federal		X	X		

Source: NCSL

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A person in New Jersey who comes into control of lost property or property that was mislaid or delivered by mistake is guilty of theft if, knowing the owner's identity and with intent to deprive the owner of property, he converts the property to his own use. West Virginia also made a felony offense of taking another's name for the purpose of conducting financial or credit transactions in that name. In Wisconsin it's called a misappropriation of personal identifying information and includes recovery of damages, court costs and attorneys' fees.

Other states have addressed the problem through legislation that gives consumers more control.

Other states have addressed the problem of identity theft through legislation to provide consumers more control over their credit information and allow theft victims to catch fraudulent accounts early and monitor credit reports for inaccurate data. Colorado passed a law in 1997 that requires credit bureaus, upon request, to provide state consumers one free copy of their credit report every year. The bill also requires, for the first time in any state, that credit bureaus send consumers a notice of their right to obtain a free annual credit report whenever there are three or more inquiries about an individual consumer or whenever there is a report that would place negative information in a consumer's file.

Colorado's law increased fines for credit reporting agencies that fail to correct false information within 30 days of notification. New Jersey consumers also can obtain an annual free copy of their credit report upon request. Other states that provide consumers with free access to their credit reports are Georgia (two per year), Maryland, Massachusetts and Vermont.

Federal Action

The federal Identity Theft Protection Act of 1998 was recently signed into law.

Congress recently passed the Identity Theft Protection Act of 1998. It amends the federal criminal code, making it unlawful for anyone to knowingly transfer or use, without lawful authority, another person's identification with the intent to commit unlawful activity that constitutes a violation of federal law or a felony under state or local law. The new law sets criminal penalties for first and subsequent offenses. It also provides for mandatory restitution for victims that may include payment of any costs, including attorneys' fees.

The U.S. Postal Service recently began a change of address policy that now requires post offices to send a "Move Validation Letter" to both an old and a new address, so that a thief cannot divert customer mail without their knowledge. The letter asks customers to call an 800 number if a change of address was not filed. An individual can be arrested if suspected of stealing mail or filing a fake change of address and prosecuted if he or she applies for a credit card using another's name.

Legislation alone is not the complete solution to the identity theft dilemma. Consumers must take steps to secure their own financial records. They should never provide personal information over the phone, except to someone known or an established organization; shred preapproved credit applications, credit card receipts and other financial documentation; and ask businesses to limit access to their personal data. The credit industry should provide individual consumers with copies of their credit reports; take steps to more strictly verify a credit applicant's identification; and track more closely identity fraud cases, data and statistics.

Selected References

http://www.privacyrights.org/identity.html
Smith, Robert Ellis. "Compilation of State and Federal Privacy Laws 1997," *Privacy Journal*, Providence, R.I.

Contact for More Information

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ARTICLE 19A.
Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means.

§ 14-113.1. Use of false or counterfeit credit device; unauthorized use of another's credit device; use after notice of revocation.

It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, or counterfeit telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device of another without the authority of the person to whom such number or device was issued, or by the use of any telephone number, credit number or other credit device in any case where such number or device has been revoked and notice of revocation has been given to the person to whom issued or he has knowledge or reason to believe that such revocation has occurred.

§ 14-113.2. Notice defined; prima facie evidence of receipt of notice.

The word "notice" as used in G.S. 14-113.1 shall be construed to include either notice given in person or notice given in writing to the person to whom the number or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after five days from the date of the deposit in the mail.

§ 14-113.3. Use of credit device as prima facie evidence of knowledge.

The presentation or use of a revoked, false, fictitious or counterfeit telephone number, credit number, or other credit device for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be prima facie evidence of knowledge that the said credit device is revoked, false, fictitious or counterfeit; and the unauthorized use of any telephone number, credit number or other credit device of another shall be prima facie evidence of knowledge that such use was without the authority of the person to whom such number or device was issued.

§ 14-113.4. Avoiding or attempting to avoid payment for telecommunication services.

It shall be unlawful for any person to avoid or attempt to avoid, or to cause another to avoid, the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities by the use of any fraudulent scheme, device, means or method.

§ 14-113.5. Making, distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.

(a) It shall be unlawful for any person knowingly to:

(1) Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunication service provider in violation of this Article, or

b. To conceal, or assist another to conceal, from any supplier of a telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any telecommunication, or

(2) Sell, possess, distribute, give, transport, or otherwise transfer to another or offer or advertise for sale any:

a. Unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for a purpose described in (1)a or (1)b above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling the unlawful telecommunication device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device; or

(3) Publish plans or instructions for making or assembling or using any unlawful telecommunication device, or

(4) Publish the number or code of an existing, cancelled, revoked or nonexistent telephone number, credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices with knowledge or reason to believe that it may be used to avoid the payment of any lawful telephone or telegraph toll charge under circumstances evincing an intent to have the telephone number, credit number, credit device or method of numbering or coding so used.

(5) Repealed by Session Laws 1995, c. 425, s. 1.

(b) Any unlawful telecommunication device, plans, instructions, or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section. Upon the conviction of a person for a violation of this section, the court may order the sheriff of the county in which the person was convicted to destroy as contraband or to otherwise lawfully dispose of the unlawful telecommunication device, plans, instructions, or publication.

(c) The following definitions apply in this section and in G.S. 14-113.6:

(1) Manufacture of an unlawful telecommunication device. - The production or assembly of an unlawful telecommunication device or the modification, alteration, programming or reprogramming of a telecommunication device to be capable of acquiring or facilitating

the acquisition of telecommunication service without the consent of the telecommunication service provider.

(2) Publish. - The communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(3) Telecommunication device. - Any type of instrument, device, machine or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component that is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(4) Telecommunication service. - Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature of telephone, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(5) Telecommunication service provider. - A person or entity providing telecommunication service, including, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(6) Unlawful telecommunication device. - Any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable, of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number or any telecommunication service without the consent of the telecommunication service provider. The term includes, telecommunications devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. This section shall not apply to any device operated by a law enforcement agency in the normal course of its activities.

§ 14-113.6. Penalties for violation; civil action.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor. However, if the offense is a violation of G.S. 14-113.5 and involves five or more unlawful telecommunication devices the person shall be guilty of a Class G felony.

(b) The court may, in addition to any other sentence authorized by law, order a person convicted of violating G.S. 14-113.5 to make restitution for the offense.

(c) Any person or entity aggrieved by a violation of G.S. 14-113.5 may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law.

§ 14-113.6A. Venue of offenses.

(a) Any of the offenses described in Article 19A which involve the placement of telephone calls may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

(b) An offense under former G.S. 14-113.5(3) or 14-113.5(4) (see now G.S. 14-113.5(a)(3) or 14-113.5(a)(4)) may be deemed to have been committed at either the place at which the publication was initiated or at which the publication was received or at which the information so published was utilized to avoid or attempt to avoid the payment of any lawful telephone or telegraph toll charge.

§ 14-113.7. Article not construed as repealing § 14-100.

This Article shall not be construed as repealing G.S. 14-100.

§ 14-113.7A. Application of Article to credit cards.

This Article shall not be construed as being applicable to any credit card as the term is defined in G.S. 14-113.8.

ARTICLE 19B.
Financial Transaction Card Crime Act.

§ 14-113.8. Definitions.

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) Acquirer. - "Acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that authorizes a merchant to accept payment by financial transaction card for money, goods, services or anything else of value.

(1a) Automated Banking Device. - "Automated banking device" means any machine which when properly activated by a financial transaction card and/or personal identification code may be used for any of the purposes for which a financial transaction card may be used.

(2) Cardholder. - "Cardholder" means the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

(3) Expired Financial Transaction Card. - "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown on it has elapsed.

(4) Financial Transaction Card. - "Financial transaction card" or "FTC" means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder:

a. In obtaining money, goods, services, or anything else of value on credit; or

b. In certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business; or

c. In providing the cardholder access to a demand deposit account or time deposit account for the purpose of:

1. Making deposits of money or checks therein; or

2. Withdrawing funds in the form of money, money orders, or traveler's checks therefrom; or

3. Transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account; or

4. Transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein; or

5. For the purchase of goods, services or anything else of value; or

6. Obtaining information pertaining to any demand deposit account or time deposit account;

d. But shall not include a telephone number, credit number, or other credit device which is covered by the provisions of Article 19A of this Chapter.

(5) Issuer. - "Issuer" means the business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(6) Personal Identification Code. - "Personal identification code" means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card by the issuer to permit authorized electronic use of that FTC.
(7) Presenting. - "Presenting" means, as used herein, those actions taken by a cardholder or any person to introduce a financial transaction card into an automated banking device, including utilization of a personal identification code, or merely displaying or showing a financial transaction card to the issuer, or to any person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud.
(8) Receives. - "Receives" or "receiving" means acquiring possession or control or accepting a financial transaction card as security for a loan.
(9) Revoked Financial Transaction Card. - "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

§ 14-113.9. Financial transaction card theft.

(a) A person is guilty of financial transaction card theft when:
(1) He takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder; or
(2) He receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or
(3) He, not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the issuer; or
(4) He, not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.
(b) Credit card theft is punishable as provided by G.S. 14-113.17(b).

§ 14-113.10. Prima facie evidence of theft.

When a person has in his possession or under his control financial transaction cards issued in the names of two or more other persons other than members of his immediate family, such possession shall be prima facie evidence that such financial transaction cards have been obtained in violation of G.S. 14-113.9(a).

§ 14-113.11. Forgery of financial transaction card.

(a) A person is guilty of financial transaction card forgery when:
(1) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely embosses a purported financial transaction card or utters such a financial transaction card; or

(2) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely encodes, duplicates or alters existing encoded information on a financial transaction card or utters such a financial transaction card; or
(3) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a financial transaction card.
(b) A person falsely makes a financial transaction card when he makes or draws, in whole or in part, a device or instrument which purports to be the financial transaction card of a named issuer but which is not such a financial transaction card because the issuer did not authorize the making or drawing, or alters a financial transaction card which was validly issued.
(c) A person falsely embosses a financial transaction card when, without authorization of the named issuer, he completes a financial transaction card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder.
(d) A person falsely encodes a financial transaction card when, without authorization of the purported issuer, he records magnetically, electronically, electro-magnetically or by any other means whatsoever, information on a financial transaction card which will permit acceptance of that card by any automated banking device. Conviction of financial transaction card forgery shall be punishable as provided in G.S. 14-113.17(b).

§ 14-113.12. Prima facie evidence of forgery.
(a) When a person, other than the purported issuer, possesses two or more financial transaction cards which are falsely made or falsely embossed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(1) or 14-113.11(a)(2).
(b) When a person, other than the cardholder or a person authorized by him possesses two or more financial transaction cards which are signed, such possession shall be prima facie evidence that said cards were obtained in violation of G.S. 14-113.11(a)(3).

§ 14-113.13. Financial transaction card fraud.
(a) A person is guilty of financial transaction card fraud when, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he
(1) Uses for the purpose of obtaining money, goods, services or anything else of value a financial transaction card obtained or retained, or which was received with knowledge that it was obtained or retained, in violation of G.S. 14-113.9 or 14-113.11 or a financial transaction card which he knows is forged, altered, expired, revoked or was obtained as a result of a fraudulent application in violation of G.S. 14-113.13(c); or
(2) Obtains money, goods, services, or anything else of value by:
a. Representing without the consent of the cardholder that he is the holder of a specified card; or
b. Presenting the financial transaction card without the authorization or permission of the cardholder; or
c. Representing that he is the holder of a card and such card has not in fact been issued; or

d. Using a financial transaction card to knowingly and willfully exceed:
1. The actual balance of a demand deposit account or time deposit account; or
2. An authorized credit line in an amount which exceeds such authorized credit line in the amount of five hundred dollars ($500.00), or fifty percent (50%) of such authorized credit line, whichever is greater; or
(3) Obtains control over a financial transaction card as security for debt; or
(4) Deposits into his account or any account, by means of an automated banking device, a false, fictitious, forged, altered or counterfeit check, draft, money order, or any other such document not his lawful or legal property; or
(5) Receives money, goods, services or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered or counterfeit or that the above deposited item was not his lawful or legal property.
(b) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person is guilty of a financial transaction card fraud when, with intent to defraud the issuer or the cardholder, he
(1) Furnishes money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained in violation of G.S. 14-113.9, or a financial transaction card which he knows is forged, expired or revoked; or
(2) Fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished.
Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(a) if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period. Conviction of financial transaction card fraud as provided in subsection (a) or (b) of this section is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.
(c) A person is guilty of financial transaction card fraud when, upon application for a financial transaction card to an issuer, he knowingly makes or causes to be made a false statement or report relative to his name, occupation, financial condition, assets, or liabilities; or willfully and substantially overvalues any assets, or willfully omits or substantially undervalues any indebtedness for the purpose of influencing the issuer to issue a financial transaction card.
Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).
(c1) A person authorized by an acquirer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card or a financial transaction card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, acquirer, or cardholder, remits to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such person, his agent or employee, is guilty of financial transaction card fraud.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(d) A cardholder is guilty of financial transaction card fraud when he willfully, knowingly, and with an intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, submits, verbally or in writing, to the issuer or any other person, any false notice or report of the theft, loss, disappearance, or nonreceipt of his financial transaction card.

Conviction of financial transaction card fraud as provided in this subsection is punishable as provided in G.S. 14-113.17(a).

(e) In any prosecution for violation of G.S. 14-113.13, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

(f) For purposes of this section, revocation shall be construed to include either notice given in person or notice given in writing to the person to whom the financial transaction card and/or personal identification code was issued. Notice of revocation shall be immediate when notice is given in person. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received after seven days from the date of the deposit in the mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

§ 14-113.14. Criminal possession of financial transaction card forgery devices.

(a) A person is guilty of criminal possession of financial transaction card forgery devices when:

(1) He is a person other than the cardholder and possesses two or more incomplete financial transaction cards, with intent to complete them without the consent of the issuer; or

(2) He possesses, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be financial transaction cards of an issuer who has not consented to the preparation of such financial transaction cards.

(b) A financial transaction card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, encoded or written upon it.

Conviction of criminal possession of financial transaction card forgery devices is punishable as provided in G.S. 14-113.17(b).

§ 14-113.15. Criminal receipt of goods and services fraudulently obtained.

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of G.S. 14-113.13(a) with the knowledge or belief that the same were obtained in violation of G.S. 14-113.13(a). Conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(a) if the value of all the money,

goods, services and anything else of value, obtained in violation of this section, does not exceed five hundred dollars ($500.00) in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as provided in G.S. 14-113.17(b) if such value exceeds five hundred dollars ($500.00) in any six-month period.

§ 14-113.15A. Criminal factoring of financial transaction card records.

Any person who, without the acquirer's express authorization, employs or solicits an authorized merchant, or any agent or employee of such merchant, to remit to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by such merchant, his agent or employee, is guilty of a felony punishable as provided in G.S. 14-113.17(b).

§ 14-113.16. Presumption of criminal receipt of goods and services fraudulently obtained.

A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company from other than an authorized agent of such company which was acquired in violation of G.S. 14-113.13(a) without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of G.S. 14-113.13(a).

§ 14-113.17. Punishment and penalties.

(a) A person who is subject to the punishment and penalties of this Article shall be guilty of a Class 2 misdemeanor.

(b) A crime punishable under this Article is punishable as a Class I felony.

§ 14-100. Obtaining property by false pretenses.

(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: 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.

(b) Evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.

(c) For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1020*
Proposed Committee Substitute H1020-CSRH-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Safety Professionals. (Public)

Sponsors:

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

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 37.

"Safety Profession.

"§ 90-646. Definitions.

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional. -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, ergonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5). No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(b) Any person who violates this Article is guilty of a Class 2 misdemeanor. Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of

this Article. 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 whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(c) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article or by a person who is licensed as an engineer under Chapter 89C of the General Statutes.

(d) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

"**§ 90-648. Exemptions.**

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP' or 'CSP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional.

(4) The practice of the safety profession as defined in this Article by a person who is licensed as an engineer under Chapter 89C of the General Statutes."

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

HOUSE BILL 1020:
Safety Professionals

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Dedmon
Date:	April 21, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition -- PCS H1020-CSRH-001		Committee Counsel

SUMMARY: *The proposed committee substitute would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations. The PCS would make it a Class 2 misdemeanor to engage in the practice of safety as a safety professional without completing the training and studies required by GS 90-646(5). Safety professionals would be defined as persons who have specified training and are competent to evaluate hazardous conditions and practices, analyze accident causes, develop hazard control designs, procedures, and programs, administer and advise others on hazard controls and hazard control programs, and audit and evaluate the effectiveness of hazardous controls and hazardous control programs. The PCS would require safety professionals to be certified by a nonprofit corporation, incorporated in Illinois in 1969 and established to improve the practice and educational standards for this profession. This organization, the Board of Certified Safety Professionals, would set the education, experience, examination, and maintenance requirements.*

The new Article would exempt students of safety engaged in supervised safety activities, persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles, or engineers who are licensed under Chapter 89C of the General Statutes.

The PCS would take effect when it becomes law.

H1020-SMRH-001

Title Protection for North Carolina Safety Professionals

What it is & does:

- Define the practice of safety
- Define the qualifications of a "safety professional"
- Prevent exclusion in the practice of safety
- Follows precedent of the NC Industrial Hygiene Council
- Provides deserved recognition for the profession
- Codifies trademark protection

What it is not nor does not do:

- Cost anything
  - no fees
  - no funding
  - no bureaucracy
  - no "Departments," "Boards," or "Agencies"
- No exam
- Prevent anyone from practicing safety
- Not a licensing initiative

TITLE PROTECTION FOR THE SAFETY PROFESSION
KEY ISSUES IN NORTH CAROLINA

- This Title Protection bill is designed to recognize the safety profession. It provides recognition for titles, terms, and key definitions used by the profession. It provides legal recognition for the profession; and has the state of North Carolinalegally protect the use of professional safety titles.

- The bill is crafted so that all qualified safety professionals are included. It provides official state recognition for the entire safety profession; it positions all safety professionals to receive legislative recognition.

- The American Society of Safety Engineers (ASSE) recognizes the possibility that, if ASSE does not take the initiative in defining the profession, another entity will do it for us. The outcome of such an action could be detrimental to our members and the safety profession overall. Therefore, a key aspect of the bill is the language which states that any safety professional protected by the act cannot be prohibited by other legislation and regulation from working in the safety profession.

- The legislation allows the designated safety titles to be used only by those who meet the criteria outlined in the definitions that are part of the bill. In order for a person to call themselves a safety professional, they would be required to meet one of the criteria. However, the bill does not prevent anyone from working in safety. In fact it specifically permits anyone to practice safety, regardless of their qualifications. The legislation only protects the use of the professional safety titles.

- The legislation is revenue neutral. It will not require funding nor formation of governmental bodies. There is no associated agency, board, or Department required to oversee the protection of titles. There are no exams or fees. There are no licenses involved.

- BCSP certifications are given specific recognition since legislation has been enacted in four (4) states, and introduced in many others. It also follows the 1997 precedent in North Carolina, of the "Act to Protect the Profession of Industrial Hygienists" which protects IH organizations.

ABOUT ASSE

The American Society of Safety Engineers (ASSE), is the oldest and largest Society of Safety Professionals in the world. Founded in 1911, our membership currently numbers over 32,000 dedicated safety professionals. Included in this membership are Certified Safety Professionals, Professional Engineers, ergonomists, academicians, fire protection engineers, system safety experts, industrial hygienists, physicians, occupational nurses, and an impressive collection of other disciplines, skills, and backgrounds. We pride ourselves on our dedication to excellence, expertise, and commitment to the protection of people, property, and environment on a world-wide basis.

ASSE serves as Secretariat of seven (7) American National Standards Institute Committees (ANSI) developing safety and health standards which are used by private sector organizations as well as state/Federal governmental agencies such as MSHA, OSHA, etc... ASSE members also sit on over forty (40) additional standards development committees and the Society sponsors educational sessions on standards development. The Society also has eleven (11) technical divisions consisting of: Construction, Consultants, Engineering, Environmental, Health Care, International, Management, Public Sector, Risk Management and Insurance, Mining, and Transportation. The ASSE members included in these divisions are leaders in their field with the knowledge and expertise needed to move safety and health forward on a global level. The Society is also currently recruiting members for a new Industrial Hygiene Division.

<u>North Carolina Membership</u>

The ASSE North Carolina Chapters are also active participants in a wide variety of public and private sector policy issues. We have recently introduced title protection legislation to protect the profession and provide deserved recognition. Although there is some overlap with Chapters in neighboring states, there are approximately 1,000 ASSE members in North Carolina working to protect people, property, and the environment. At present we have the following chapters and membership:

- Eastern Carolina (Greenville area) 93 Members
- Greater Tidewater (Northeastern NC) - 205 Members
- North Carolina (Raleigh/Durham area) - 223 Members
- Piedmont (Southwestern NC) - 203 Members
- Tarheel (Charlotte area) - 263 Members
- Triad (Greensboro area) - 180 Members
- Western Carolina (Asheville area) 79 Members

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1020*

Short Title: Safety Professionals. (Public)

Sponsors: Representative Dedmon.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

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 37.

"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional (SP). -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, erogonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"**§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.**

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5).

(b) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(c) Any person who violates this Article is guilty of a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. 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 whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(e) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article.

"**§ 90-648. Exemptions.**

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP', 'CSP', or 'SP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional."

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

VISITOR REGISTRATION SHEET

DATE 22 APRIL 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ASSE
[signature]	~~ASSE~~
[signature]	McClees Consulting
Henri McClees	McClees Consulting
[signature]	NCDOC
Bill Alexander	NC PBA
John M. Chapman	ASSE
Doug Lassiter	McClees Consulting
[signature]	Randolph Co. Register of Deeds
[signature]	SOS
Dave Simpson	CAROLINAS AGC
Eric Rudolph	Cherokee Casinos

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Friday, April 23, 1999
ROOM 421 LOB
10:00 AM

CALL TO ORDER

Representative Braswell, Chairman

HB 1020 SAFETY PROFESSIONALS. REP. DEDMON

HB 1227 BULLET-PROOF VEST/COMMIT FELONY. REP. HORN

HB 817 LAW ENF. OFF. DISCIPLINE. REP. HENSLEY

HB 94 SUPERIOR COURT DIVISION ELECTIONS. REP. MICHAUX

HB 27 EMER. SHELTER/HEALTH FACIL. IMMUNITY. REP. CLARY

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
FRIDAY, APRIL 23, 1999
10:00 A. M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Page, Emily Cooke, was introduced to the Committee.

The bills on the agenda were HB 1020, sponsored by Rep. Dedmon, HB 1227, sponsored by Rep. Horn, HB 817, sponsored by Rep. Hensley, HB 94, sponsored by Rep. Michaux, and HB 27, sponsored by Rep. Clary.

The Chairman informed the committee that the Senate was now taking up HB 27 and the Committee would not consider this bill.

The Chairman recognized Rep. Michaux to explain HB 94, **(Short title: Superior Court Division Elections)**. Judge Howard Manning, representing the Conference of Superior Court Judges, spoke in opposition of this bill. There was no motion made regarding the disposition of this bill and the bill was tabled until a later time.

Rep. Hensley was recognized to explain HB 817 **(Short title: Law Enforcement Officer Discipline).** Rep. Hensley explained the bill and moved for a favorable report. Andy Romanet of the NC League of Municipalities spoke in opposition to the bill. Chief Tom Moss of Garner and Chief Windy Hunter of Cary also spoke in opposition to the bill. Bill Alexander of the Police Benevolent Association and Trooper Association spoke in support of the bill. Rep. Hensley's motion to give the bill a favorable report failed. Rep. Sherrill moved for an unfavorable report of HB 817 by the committee. The committee gave an unfavorable report to the bill.

HB 1020**(Short title: Safety Professionals).** The Chairman appointed a subcommittee of Rep. Cansler as Chair, Rep. Sherrill and Rep. Crawford.

HB 1227 was not considered because the sponsor was not present.

HB 94 would be concluded at a later meeting.

Rep. Hensley announced that the subcommittee for HB 1279 would meet at the end of Session and would make their recommendations to the committee.

The meeting was adjourned.

Members present:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Hensley
Rep. Kiser	Rep. Russell	Rep. Sherrill
Rep. Crawford	Rep. Jarrell	

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 27*

Short Title: Emer. Shelter/Health Facil. Immunity. (Public)

Sponsors: Representatives Clary; Alexander, Allen, Bowie, Cansler, Cole, Culp, Cunningham, Earle, Easterling, Gardner, Gillespie, Hurley, Justus, Kiser, McComas, Morris, Mosely, Owens, Preston, Rayfield, Russell, Smith, Teague, Walend, Warner, C. Wilson, and G. Wilson.

Referred to: Rules, Calendar and Operations of the House.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-112. Limitation on liability for health care facilities that provide temporary shelter or temporary services during a disaster or emergency; waiver of rules.**

(a) Any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not liable for any personal injury, wrongful death, property damage, or other loss caused by the facility's or home care agency's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The facility or home care agency is licensed to provide during its ordinary course of business.

(2) Provided in accordance with an agreement between the health care facility or home care agency and the emergency management agency.

(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the health care facility or home care agency.

(d) Commission rules pertaining to facilities or home care agencies shall be waived to the extent necessary to allow the facility or home care agency to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in a facility.

(e) As used in this section:

(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 2. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-7. Limitation on liability for certain adult care homes providing shelter or services during disaster or emergency; waiver of rules.**

(a) An adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not

liable for any personal injury, wrongful death, property damage, or other loss caused by the adult care home's acts or omissions in the provision of shelter or services.

(b) The immunity provided in subsection (a) of this section applies only to shelter or services:

(1) The adult care home is licensed to provide during its ordinary course of business.

(2) Provided in accordance with an agreement between the adult care home and the emergency management agency.

(3) Provided for not more than 45 days after the declaration of the emergency or disaster, unless the 45-day immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers.

(c) The immunity provided in subsection (a) of this section does not apply if it is determined that the personal injury, wrongful death, property damage, or other loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the adult care home.

(d) Commission rules including pertaining to adult care homes shall be waived to the extent necessary to allow the adult care home to provide the temporary shelter and temporary services requested by the emergency management agency as authorized by this section, unless the Division determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. In the event the Division determines that placement or services would pose an unreasonable risk, then the Division shall work with the emergency management agency to assist in identifying ways of removing or reducing the risk or in securing alternative temporary shelter or temporary services during the disaster or emergency. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of placement of one or more individuals in an adult care home.

(e) As used in this section:

(1) 'Emergency management agency' means a State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(2) 'Handicapped individual' means an individual who has a physical or mental disability or an infirmity."

Section 3. This act becomes effective July 1, 1999, and applies to shelter or services provided on and after that date.

North Carolina General Assembly
Legislative Services Office

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March 1, 1999

MEMORANDUM

TO: HOUSE JUDICIARY II COMMITTEE

FROM: STEVEN ROSE, COMMITTEE COUNSEL

RE: **HOUSE BILL 27; Emergency shelter during disasters-immunity from liability**

House Bill 27 is recommended by the North Carolina Study Commission on Aging. It provides immunity from liability for health care facilities, home care agencies, and adult care homes, when care is rendered or shelter given to handicapped persons during a declaration of disaster or emergency, whether or not the facility is compensated.

Section 1 of the bill amends Part A of Article 6 of Chapter 131E by adding G.S. 131E-112. It provides that a health care facility (defined in G.S. 131E-154.2(3)), or a home care agency (defined in G.S. 131E-136(2)) that provides temporary shelter or temporary services to handicapped individuals during a declared disaster or emergency will not be liable for personal injury, wrongful death, property damage, or other loss caused by the facility's or agency's acts or omissions in the provision of such shelter or services. Immunity applies whether or not the facility is compensated. In order to quality for this immunity, the services must be rendered at the request of an emergency management agency implementing an approved emergency plan; the facility or home care agency must be licensed to provide such care in the ordinary course of business; care must be provided in accordance with an agreement between the providing facility or agency and the emergency management agency; the care must be provided for not more than 45 days after declaration of the emergency or disaster, with the possibility of a 45 day continuation of immunity if the executive order declaring the disaster or emergency is extended.

This immunity does not apply if the damage or injury is caused by gross negligence, wanton conduct, or intentional wrongdoing. Provision is made for the waiver of rules of the North Carolina Medical Care Commission in order to permit the rendering of the emergency services.

"Emergency Management Agency" and "handicapped individual" are defined in subsection (e) of proposed G.S. 131E-112.

Section 2 of the bill amends Article 1 of Chapter 131D by adding G.S. 131D-7 to provide a similar waiver to adult care homes as defined in G.S. 131D-2(1b).

The act is effective July 1, 1999, and applies to shelter or services provided on or after that date.

H27-SMRL-001

§ 131E-154.2. Definitions.

As used in this Part, unless the context clearly implies otherwise:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Department" means the Department of Health and Human Services.

(3) "Health Care Facility" means a hospital, psychiatric facility; rehabilitation facility; long-term care facility; home health agency; intermediate care facility for the mentally retarded; chemical dependency treatment facility; and ambulatory surgical facility.

(4) "Nursing pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel, including nurses, nursing assistants, nurses aides, and orderlies. "Nursing pool" does not include an individual who engages solely in providing his own services on a temporary basis to health care facilities.

(5) "Trauma" means acute physical injury to the human body that is judged, by the use of standardized field triage criteria (anatomic, physiologic, or mechanism of injury), to create a significant risk of mortality or major morbidity. (1989, c. 744, s. 1; 1993, c. 336, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 131E-154.3. Licensing.

(a) No person shall operate or represent himself to the public as operating a nursing pool without obtaining a license from the Department.

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Part and with rules adopted pursuant to it.

(d) Nursing pools administered by health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article. (1989, c. 744, s. 1.)

§ 131E-154.4. Rules a

(a) The Commission sha
necessary for the implemer
include the following requir
(1) The nursing pool sh
provides care meets
continuing educatio
the employee will b
(2) The nursing pool s
regulations relating
of personnel;
(3) The nursing pool sh
bility insurance to
expense incident t
injury of any perso
tice in the provisio
pool or its employe
(4) The nursing pool s
personnel policies
These policies shal
personnel, training
evaluation, and or
(5) Any other aspects o
be regulated to pro
(b) The Commission sha
lation of charges by the nur
pool. (1989, c. 744, s. 1.)

§ 131E-154.5. Inspec

The Department shall ins
rules adopted pursuant to
ance with the provisions
pursuant to it. Inspections
rules adopted by the Comm

§ 131E-154.6. Adver
procedu

(a) The Department ma
call, cancel, or amend a lic
failure to comply with the
adopted pursuant to it.
(b) The provisions of Ch
Administrative Procedure
tion and judicial review in
the action described in sub
1.)

§ 131E-154.7. Injun

(a) Notwithstanding the
the Department may main
injunctive relief or other
prevent the establishment

The duration of the temporary absence shall be calculated from the day of the patient's admission to a hospital until the date the nursing home receives written notice of the specific date of discharge.

This subsection shall not apply in instances in which the patient's treatment can no longer be provided by the nursing home upon re-admission.

(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars ($50.00) a day, up to a maximum of one thousand five hundred dollars ($1,500), against the nursing home, for each violation.

(c) The provisions of Chapter 150B of the General Statutes that govern contested cases apply to appeals from Department action pursuant to this section. (1987 (Reg. Sess., 1988), c. 1080, s. 1.)

§ 131E-131. Rule-making authority; enforcement.

The Commission shall adopt rules necessary for the implementation of this Part.

The Department shall enforce the rules adopted by the Commission to implement this Part. (1993, c. 499, s. 2.)

§§ 131E-132 through 131E-134: Reserved for future codification purposes.

Part C. Home Care Agency Licensure Act.

§ 131E-135. Title; purpose.

(a) This Part shall be known as "Home Care Agency Licensure Act."

(b) The purpose of this Part is to establish licensing requirements for home care agencies. (1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34.)

Editor's Note. — Session Laws 1991, c. 59, which amended this section, in s. 2 provides: "The Commission shall adopt rules necessary to regulate home care services provided by a hospital. Such rules shall be comparable, but not necessarily identical to the Commission's rules for home care agencies and becomes [sic] effective July 1, 1992."

§ 131E-136. Definitions.

As used in this Part, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(2) "Home care agency" means a private or public organization which provides home care services.

(3) "Home care services" means any of the following services and directly related medical supplies and appliances, which

are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;
b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;
c. Medical social services;
d. In-home aide services that involve hands-on care to an individual;
e. Infusion nursing services; and
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E. (1971, c. 539, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1022, s. 4; 1987, c. 34, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.90.)

Editor's Note. — Session Laws 19
443, s. 1.1. provides: "This act shal
known as 'The Current Operations
Capital Improvements Appropriat
Act of 1997'."

Session Laws 1997-443, s. 35.4.
severability clause.

§ 131E-137. Services t

(a) Every county shall pro
nursing services, and at le
services: part-time, interm
therapy, speech therapy, me
services.

(b) Repealed by Session L
1992.

(c) These services shall
licensed under this Part. Th
contract with another home

(d) Repealed by Session L
1184; 1979, c. 754, s. 1; 1983
c. 761, s. 34.)

§ 131E-138. Licensur

(a) No person or governm
agency without a license obt
this Part shall be construe
individual health professio
professions or to create any

(b) Repealed by Session
1992.

(c) An application for a
Department, and each appl
contain all information requ
be granted to the applican
ment that the applicant h
Part and the rules promulg

(d) The Department sha
the rules of the Commissio

(e) Each license shall be
named in the license and
except with the written ap

(f) The license shall be
licensed premises.

(g) The Commission sha
agency shall be deemed t
issued a license without
agency is already certified
Accreditation of Health C
Nursing, National Home C
tion Commission for In-Ho
nized by the Commission a
for all of the home care se
of continuing care retiren
Carolina Department of I

(b) Facilities subject to the provisions of this section shall include:

(1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and

(2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C.S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1997-443, s. 11A.118(a).)

Cross References. — As to criminal provisions for patient abuse and neglect, see § 14-32.2.

Editor's Note. — This Article is Part 2 of Article 5 of Chapter 108, as recodified pursuant to Session Laws 1981, c. 275, s. 2, effective Oct. 1, 1981.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subsection (a).

§ 131D-2. Licensing of adult care homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(1a) "Administrator" means a person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed domiciliary home.

(1b) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Facility Services.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 94

Short Title: Superior Court Division Elections. (Public)

Sponsors: Representatives Michaux; and Luebke.

Referred to: Judiciary IV.

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ALLOW ELECTION OF SUPERIOR COURT BY DIVISION, AND TO IMPLEMENT THAT AMENDMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 16 of Article IV of the Constitution of North Carolina reads as rewritten:

"**Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.** Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the ~~State~~ State, by the qualified voters of their judicial division, or by the voters of their respective districts, as the General Assembly may prescribe."

Section 2. Section 11 of Article IV of the Constitution of North Carolina reads as rewritten:

"**Sec. 11. Assignment of Judges.** The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized ~~duty.~~ duty, but regular Judges of Superior Court may be assigned outside of their judicial division only in the case of emergency. The principle of rotating Superior Court Judges among the various districts of a division is

a salutary one and shall be observed. For this purpose the General Assembly ~~may~~ shall divide the State into ~~a number of~~ not less than eight judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge."

Section 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide election on November 2, 1999, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments allowing Judges of Superior Court to be elected by the qualified voters of their judicial division."

Section 4. If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective upon this certification. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 5. G.S. 7A-41.2 reads as rewritten:

"**§ 7A-41.2. Nomination and election of regular superior court judges.**

Candidates for the office of regular superior court judge shall be both nominated and elected by the qualified voters of the superior court ~~district~~ division for which the election is sought."

Section 6. G.S. 163-1 is amended in the table by deleting the words "Superior Court District" in the column entitled "Jurisdiction" under the entry for "Judges of the Superior Court".

Section 7. G.S. 163-140(b)(5) reads as rewritten:

"(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, ~~regular resident superior court judge for the superior court district in which the county is situated,~~ and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party

name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of

elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Section 8(a). G.S. 163-192(a)(3a) reads as rewritten:

"(3a) For superior court judges for the several ~~superior court districts~~ judicial divisions in the State.

Section 8(b). G.S. 163-192(b)(4a) reads as rewritten:

"(4a) For superior court judges for the several superior court ~~districts~~ divisions in the State."

Section 9. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
~~First~~ 1A	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
1A	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
1A	3A	Pitt	2
1B	3B	Carteret, Craven, Pamlico	2
1B	4A	Duplin, Jones, Sampson	1
1B	4B	Onslow	1
1B	5	New Hanover, Pender	3
1A	6A	Halifax	1
1A	6B	Bertie, Hertford, Northampton	1
1A	7A	Nash	1
1A	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
1A	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
1B	8A	Lenoir and Greene	1

1B	8B	Wayne	1
~~Second~~2A	9	Franklin, Granville, Vance, Warren	2
2A	9A	Person, Caswell	1
2A	10A	(part of Wake, see subsection (b))	2
2A	10B	(part of Wake, see subsection (b))	2
2A	10C	(part of Wake, see subsection (b))	1
2A	10D	(part of Wake, see subsection (b))	1
2B	11A	Harnett, Lee	1
2B	11B	Johnston	1
2B	12A	(part of Cumberland, see subsection (b))	1
2B	12B	(part of Cumberland, see subsection (b))	1
2B	12C	(part of Cumberland, see subsection (b))	2
2B	13	Bladen, Brunswick, Columbus	2
2A	14A	(part of Durham, see subsection (b))	1
2A	14B	(part of Durham, see subsection (b))	3
2A	15A	Alamance	2
2A	15B	Orange, Chatham	1
2B	16A	Scotland, Hoke	1
2B	16B	Robeson	2
~~Third~~ 3A	17A	Rockingham	2
3A	17B	Stokes, Surry	2
3B	18A	(part of Guilford, see subsection (b))	1
3B	18B	(part of Guilford, see subsection (b))	1
3B	18C	(part of Guilford, see subsection (b))	1
3B	18D	(part of Guilford, see subsection (b))	1
3B	18E	(part of Guilford, see subsection (b))	1
3B	19A	Cabarrus	1
3B	19B	Montgomery, Moore	2

			Randolph	
3B		19C	Rowan	1
3B		20A	Anson, Richmond	12
3B		20B	Stanly, Union	2
3A		21A	(part of Forsyth, see subsection (b))	1
3A		21B	(part of Forsyth, see subsection (b))	1
3A		21C	(part of Forsyth, see subsection (b))	1
3A		21D	(part of Forsyth, see subsection (b))	1
3A		22	Alexander, Davidson, Davie, Iredell	2
3A		23	Alleghany, Ashe, Wilkes, Yadkin	1
~~Fourth~~4A		24	Avery, Madison, Mitchell, Watauga, Yancey	1
4A		25A	Burke, Caldwell	2
4A		25B	Catawba	2
4B		26A	(part of Mecklenburg, see subsection (b))	2
4B		26B	(part of Mecklenburg, see subsection (b))	2
4B		26C	(part of Mecklenburg, see subsection (b))	2
4B		27A	Gaston	2
4B		27B	Cleveland, Lincoln	2
4A		28	Buncombe	2
4A		29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
4A		30A	Cherokee, Clay, Graham, Macon, Swain	1
4A		30B	Haywood, Jackson	1."

Section 10. Sections 5 through 9 of this act become effective only if the qualified voters approve the constitutional amendments proposed by Sections 1 and 2 of this act, and if they are so approved, Sections 5 through 9 of this act become effective beginning with respect to the 2000 election, and Section 9 becomes effective January 1, 2001, for all other purposes.

HOUSE BILL 94:
Superior Court Division Elections

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: April 23, 1999
Version: 1

Introduced by: Representative Michaux
Summary by: Steven Rose
Committee Counsel

House Bill 94 provides for an election to amend the North Carolina Constitution to permit Superior Court Judges to be elected by Judicial Division. It also changes the number of judicial divisions and assigns Superior Court Districts to these divisions.

Section 1 of the bill amends Section 16 of Article IV of the North Carolina Constitution. Presently, regular judges of the Superior Court may be elected by the voters of the State or the voters of their district, as the General Assembly may prescribe. The amendment adds election by judicial division as a third option.

Section 2 of the bill amends Section 11 of Article IV of the North Carolina Constitution. Section 11 prescribes how assignments of judges are made, that Superior Court judges are to be rotated among the districts of a division, and that the State may be divided into a number of judicial divisions. The amendments would add a provision that regular judges of Superior Court may be assigned outside their judicial division only in the case of emergency. The section is also amended to change the current provision that the General Assembly may divide the State into a number of judicial divisions, to a provision that the General Assembly shall divide the State into not less than eight judicial divisions.

Section 3 provides that the proposed constitutional amendments will be submitted to the voters at a statewide election on November 2, 1999.

Section 4 provides that the constitutional amendments become effective upon the Board of Elections certifying their approval to the Secretary of State.

Section 5 amends G.S. 7A-41.2. Presently, that statute provides that candidates for the office of regular Superior Court Judge are nominated and elected in their Superior Court district. The amendment would provide that they are nominated and elected in their Superior Court division.

Section 6 amends G.S. 163-1 by eliminating the jurisdictional designation of Superior Court district for judges of the Superior Courts. Thus, the area in which they are elected will be the division for which they seek election, as provided in amended G.S. 7A-41.2.

Section 7 makes a technical correction to G.S. 163-140(b)(5).

Sections 8(a) and (b) make conforming amendments to G.S. 163-192(a)(3a) and G.S. 163-192(b)(4a).

Section 9 amends G.S. 7A-41(a) by changing the judicial divisions from four to eight and assigning Superior Court districts to those divisions.

Sections 5 through 9 become effective only if the constitutional amendments are approved. They become effective beginning with respect to the 2000 election, and Section 9 becomes effective January 1, 2001 for all other purposes.

H94-SMRL-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
H.B. 817 A BILL TO BE ENTITLED AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☒ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 817

Short Title: Law Enf. Off. Discipline. (Public)

Sponsors: Representative Hensley.

Referred to: Judiciary II.

April 1, 1999

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, 1999, and applies to investigations and disciplinary proceedings commenced on or after that date.

HOUSE BILL 817:
Law Enf. Off. Discipline

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hensley
Date:	April 22, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 817 would create a standardized investigation and disciplinary process for law enforcement officers in the State. The bill would provide that no officer may be discharged, suspended, or demoted for disciplinary reasons except for just cause, and a minimal due process system must exist to hear these types of actions.***

This bill would become effective October 1, 1999, and would apply to investigations and disciplinary proceedings commenced on or after that date.

BILL ANALYSIS: This bill would create a new Chapter 17F. Law enforcement agencies would be defined as any State or local law enforcement agency. Law enforcement officers would be defined 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 would prohibit the discharge, suspension, or demotion of any law enforcement officer for disciplinary reasons, except for just cause. Generally, law enforcement officers are employees at will, unless the employing agency has adopted some other standard.

G.S. 17F-3 would set forth the minimal procedures that an agency must provide when it considers matters that could reasonably lead to disciplinary action, including dismissal, demotion, suspension, or transfer for punitive reasons, against an officer. These minimal standards would 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. 17F-4 would permit 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 would allow 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 due process rights provided for in G.S. 17F-3 would require a review after the suspension.

Summary contributed to by Walker Reagan, Staff Attorney

H817-SMRH-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

$ H

D

HOUSE BILL 1020*
Proposed Committee Substitute H1020-CSRH-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Safety Professionals. (Public)

Sponsors:

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

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 37.

"Safety Profession.

"§ 90-646. Definitions.

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional. -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, ergonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5). No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(b) Any person who violates this Article is guilty of a Class 2 misdemeanor. Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of

this Article. 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 whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(c) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article or by a person who is licensed as an engineer under Chapter 89C of the General Statutes.

(d) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

"**§ 90-648. Exemptions.**

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP' or 'CSP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional.

(4) The practice of the safety profession as defined in this Article by a person who is licensed as an engineer under Chapter 89C of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1020*

Short Title: Safety Professionals. (Public)

Sponsors: Representative Dedmon.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

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 37.

"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

(4) Safety Profession. -- The science and discipline concerned with the preservation of human environmental and material resources through the systematic application of engineering, education, chemistry, physics, biological, ergonomic, psychological, physiological, and management principles for anticipating, identifying, and evaluating hazardous and potentially hazardous systems, conditions, and practices and developing, implementing, advising, and administering designs, methods, procedures, and programs.

(5) Safety Professional (SP). -- A person who, through studies and training in management principles, engineering, chemistry, physics, biology, erogonomics, psychology, physiology, and related science, has acquired competence in the safety profession, including the ability to: (i) anticipate, identify, and evaluate hazardous conditions and practices and analyze accident causes and conduct system analyses; (ii) develop hazard control designs, methods, procedures, and programs; (iii) implement, administer, and advise others on hazard controls and hazard control programs; (iv) design and implement training programs; and (v) measure, audit, and evaluate the effectiveness of hazard controls and hazard control programs.

"§ 90-647. Unlawful acts; injunctive relief; regulation prohibited.

(a) No person shall engage in or offer to engage in the practice of safety as a safety professional or represent himself or herself as a safety professional unless he or she has completed the studies and training required in G.S. 90-646(5).

(b) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(c) Any person who violates this Article is guilty of a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for an order enjoining violations of this Article. 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 whether to grant or continue an injunction, a showing of conduct in violation of this Article shall be sufficient to meet a requirement of irreparable harm. The action shall be filed in the county in which the unlawful acts are alleged to have been committed or in the county where the defendant resides.

(e) No State or local government agency shall prohibit or restrict the practice of the safety profession by a qualified individual who complies with the provisions of this Article.

"§ 90-648. Exemptions.

This Article does not apply to:

(1) A student of safety who is engaged in supervised activities related to safety.

(2) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an associate safety professional, certified safety professional, or safety professional.

(3) A person who practices within the scope of safety, injury, or illness prevention and does not use the title, 'Associate Safety Professional', 'Certified Safety Professional', or 'Safety Professional', the initials, 'ASP', 'CSP', or 'SP', or otherwise represents himself or herself to the public as an Associate Safety Professional, Certified Safety Professional, or Safety Professional."

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

HOUSE BILL 1020:
Safety Professionals

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Dedmon
Date:	April 21, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition -- PCS H1020-CSRH-001		Committee Counsel

SUMMARY: *The proposed committee substitute would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations. The PCS would make it a Class 2 misdemeanor to engage in the practice of safety as a safety professional without completing the training and studies required by GS 90-646(5). Safety professionals would be defined as persons who have specified training and are competent to evaluate hazardous conditions and practices, analyze accident causes, develop hazard control designs, procedures, and programs, administer and advise others on hazard controls and hazard control programs, and audit and evaluate the effectiveness of hazardous controls and hazardous control programs. The PCS would require safety professionals to be certified by a nonprofit corporation, incorporated in Illinois in 1969 and established to improve the practice and educational standards for this profession. This organization, the Board of Certified Safety Professionals, would set the education, experience, examination, and maintenance requirements.*

The new Article would exempt students of safety engaged in supervised safety activities, persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles, or engineers who are licensed under Chapter 89C of the General Statutes.

The PCS would take effect when it becomes law.

H1020-SMRH-001

ABOUT ASSE

The American Society of Safety Engineers (ASSE), is the oldest and largest Society of Safety Professionals in the world. Founded in 1911, our membership currently numbers over 32,000 dedicated safety professionals. Included in this membership are Certified Safety Professionals, Professional Engineers, ergonomists, academicians, fire protection engineers, system safety experts, industrial hygienists, physicians, occupational nurses, and an impressive collection of other disciplines, skills, and backgrounds. We pride ourselves on our dedication to excellence, expertise, and commitment to the protection of people, property, and environment on a world-wide basis.

ASSE serves as Secretariat of seven (7) American National Standards Institute Committees (ANSI) developing safety and health standards which are used by private sector organizations as well as state/Federal governmental agencies such as MSHA, OSHA, etc... ASSE members also sit on over forty (40) additional standards development committees and the Society sponsors educational sessions on standards development. The Society also has eleven (11) technical divisions consisting of: Construction, Consultants, Engineering, Environmental, Health Care, International, Management, Public Sector, Risk Management and Insurance, Mining, and Transportation. The ASSE members included in these divisions are leaders in their field with the knowledge and expertise needed to move safety and health forward on a global level. The Society is also currently recruiting members for a new Industrial Hygiene Division.

<u>North Carolina Membership</u>

The ASSE North Carolina Chapters are also active participants in a wide variety of public and private sector policy issues. We have recently introduced title protection legislation to protect the profession and provide deserved recognition. Although there is some overlap with Chapters in neighboring states, there are approximately 1,000 ASSE members in North Carolina working to protect people, property, and the environment. At present we have the following chapters and membership:

- Eastern Carolina (Greenville area) 93 Members
- Greater Tidewater (Northeastern NC) - 205 Members
- North Carolina (Raleigh/Durham area) - 223 Members
- Piedmont (Southwestern NC) - 203 Members
- Tarheel (Charlotte area) - 263 Members
- Triad (Greensboro area) - 180 Members
- Western Carolina (Asheville area) 79 Members

Title Protection for North Carolina Safety Professionals

What it is & does:

- Define the practice of safety
- Define the qualifications of a "safety professional"
- Prevent exclusion in the practice of safety
- Follows precedent of the NC Industrial Hygiene Council
- Provides deserved recognition for the profession
- Codifies trademark protection

What it is not nor does not do:

- Cost anything
  - no fees
  - no funding
  - no bureaucracy
  - no "Departments," "Boards," or "Agencies"
- No exam
- Prevent anyone from practicing safety
- Not a licensing initiative

TITLE PROTECTION FOR THE SAFETY PROFESSION
KEY ISSUES IN NORTH CAROLINA

- This Title Protection bill is designed to recognize the safety profession. It provides recognition for titles, terms, and key definitions used by the profession. It provides legal recognition for the profession; and has the state of North Carolinalegally protect the use of professional safety titles.

- The bill is crafted so that all qualified safety professionals are included. It provides official state recognition for the entire safety profession; it positions all safety professionals to receive legislative recognition.

- The American Society of Safety Engineers (ASSE) recognizes the possibility that, if ASSE does not take the initiative in defining the profession, another entity will do it for us. The outcome of such an action could be detrimental to our members and the safety profession overall. Therefore, a key aspect of the bill is the language which states that any safety professional protected by the act cannot be prohibited by other legislation and regulation from working in the safety profession.

- The legislation allows the designated safety titles to be used only by those who meet the criteria outlined in the definitions that are part of the bill. In order for a person to call themselves a safety professional, they would be required to meet one of the criteria. However, the bill does not prevent anyone from working in safety. In fact it specifically permits anyone to practice safety, regardless of their qualifications. The legislation only protects the use of the professional safety titles.

- The legislation is revenue neutral. It will not require funding nor formation of governmental bodies. There is no associated agency, board, or Department required to oversee the protection of titles. There are no exams or fees. There are no licenses involved.

- BCSP certifications are given specific recognition since legislation has been enacted in four (4) states, and introduced in many others. It also follows the 1997 precedent in North Carolina, of the "Act to Protect the Profession of Industrial Hygienists" which protects IH organizations.

VISITOR REGISTRATION SHEET

DATE 23 APRIL 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Marrow	NCPBA
Buy Alexander	NC PBA
W.A. Dillard Jr.	NCPBA / NCSHP Chpt.
B L Quin	NC PBA / NCSHP Chpt.
Donna Maynard	NC Sheriffs' Assoc
Winfield Hunter	Chief of Police, Cary, NC
TOM MOSS	CHIEF OF POLICE - GARNER
Andy Romanet	N.C.L.M.
Melissa Lovell	DOJ
Bryan Beatty	DOJ
Robin M. Chapman	ASSE
Joe McCleb	McClees Consulting
[illegible]	ASSE
Jerry Gaines	ASSE
Ron Akins	GNANC
Tim KENT	American Institute of Architects
Fred Rutledge	Randolph Co Sheriffs Office Asheboro NC
Litchard Hurley	Randolph Co Sheriffs Office Asheboro NC
W.E. Billy Smith	Lenior Co Sheriffs Office - Kinston, NC
[illegible]	NC State AFLCIO
[illegible]	NC Bus Council
[illegible]	UTU
James Stem	UTU
[illegible] McClees	McClees Consulting Inc

Judge Howard Manning

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
APRIL 23, 1999

After the adjournment of session, the committee members met around the desk of the Chairman, Rep. Braswell. The purpose of the meeting was to discuss HB 1279 which had been referred to a subcommittee chaired by Rep. Hensley. The subcommittee reported that they had studied both HB 1279 and HB 814. The bills were similar, and the subcommittee recommended a Proposed Committee Substitute which would incorporate part of HB 814 into HB 1279. The committee had given a favorable report to HB 814 on April 15, 1999. A majority of the members were present and the members voted to give a favorable report to the Proposed Committee Substitute which would incorporate part of HB 814 and HB 1279.

The meeting was adjourned.

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
H.B. 1279 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO AUTHORIZE PERSONS WHOSE IDENTIFYING INFORMATION WAS FRAUDULENTLY USED TO INSTITUTE A CIVIL ACTION FOR DAMAGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1279-CSRH-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1279
THIS IS A DRAFT 23-APR-99 12:37:57
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"§ 14-113.20. Financial identity fraud.

(a) A person is guilty of financial identity fraud when the person intends to appropriate unlawfully the financial resources of another person and, without the authorization or consent of that other person, does one of the following:

(1) Obtains or records identifying information that would assist in accessing the financial resources of the other person.

(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.
(2) Drivers license numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

"§ 14-113.21. **Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.
(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.
(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"§ 14-113.22. **Venue of offenses.**

In any criminal proceeding brought under this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"§ 14-113.23. **Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) Any person whose identifying information is fraudulently used in violation of subsection (a) of this section may institute a civil action to enjoin and restrain any violation of this section and is entitled to civil damages of up to five thousand dollars ($5,000) for each violation of subsection (a) of this section, or three times the amount of actual damages, if any, sustained by the plaintiff, whichever amount is greater. The judge may award attorneys' fees to the prevailing party.

(c) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity

fraud may be ordered by the court to make restitution to any victims of this fraud.

(d) In any case in which a person obtains identifying information of another person in violation of subsection (a) of this section, uses that information to commit a crime in addition to a violation of subsection (a) of this section, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1279

Short Title: Identity Fraud. (Public)

Sponsors: Representatives Warner; Allen, Cole, Dedmon, Hurley, Jeffus, Kinney, and Owens.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO AUTHORIZE PERSONS WHOSE IDENTIFYING INFORMATION WAS FRAUDULENTLY USED TO INSTITUTE A CIVIL ACTION FOR DAMAGES.

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. Financial identity fraud.**

(a) Offense of Identity Fraud. -- Any person who knowingly and willfully obtains or records identifying information that would assist in accessing the financial resources of another person or accesses or attempts to access the financial resources of another person through the use of identifying information without the authorization or permission of that other person and with the intent unlawfully to appropriate financial resources of that other person to the person's own use or to the use of a third party is guilty of a Class I felony.

(b) Definition. -- For purposes of this section, identifying information includes a name, address, or telephone number; social security number; drivers license number; checking account number; savings account number; credit card number; debit card number; personal identification number; electronic identification number; digital signature; identification number assigned by an employer; maiden name of an individual or of the individual's mother; or any other number or information that can be used to access a person's financial resources.

(c) Civil Action. -- Any person whose identifying information is fraudulently used in violation of subsection (a) of this section may institute a civil action to enjoin and restrain any violation of this section and is entitled to civil damages of up to five thousand dollars ($5,000) for each violation of subsection (a), or three times the amount of actual damages, if any, sustained by the plaintiff, whichever amount is greater. The judge may award attorneys' fees to the prevailing party.

(d) Investigation. -- The Attorney General may investigate any complaint regarding financial identity fraud. In conducting such investigations, the Attorney General has all the investigating powers that are available to the Attorney General under Article 1 of Chapter 75 of the General Statutes.

(e) Prosecutions. -- The Attorney General may conduct the criminal prosecution of all cases of financial identity fraud or refer them to the district attorney in the county where the crime was committed.

(f) County of Offense. -- In any criminal proceeding brought pursuant to this section, the crime is considered to have been committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually in that county.

(g) Restitution. -- In addition to being imprisoned, a person found guilty of financial identity fraud under this section may be ordered by the court to make restitution to any victim of fraud.

(h) Notation in Court Records. -- In any case in which a person obtains identifying information of another person in violation of subsection (a) of this section, uses that information to commit a crime in addition to a violation of subsection (a) of this section, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed and violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1279
Proposed Committee Substitute H1279-PCS6188-RH

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

(a) A person is guilty of financial identity fraud when the person intends to appropriate unlawfully the financial resources of another person and, without the authorization or consent of that other person, does one of the following:

(1) Obtains or records identifying information that would assist in accessing the financial resources of the other person.

(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.

(2) Drivers license numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

"**§ 14-113.21. Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.
(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.
(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"**§ 14-113.22. Venue of offenses.**

In any criminal proceeding brought under this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.23. Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) Any person whose identifying information is fraudulently used in violation of subsection (a) of this section may institute a civil action to enjoin and restrain any violation of this section and is entitled to civil damages of up to five thousand dollars ($5,000) for each violation of subsection (a) of this section, or three times the amount of actual damages, if any, sustained by the plaintiff, whichever amount is greater. The judge may award attorneys' fees to the prevailing party.

(c) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of this fraud.

(d) In any case in which a person obtains identifying information of another person in violation of subsection (a) of this section, uses that information to commit a crime in addition to a violation of subsection (a) of this section, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 814
Proposed Committee Substitute H814-PCS1223-RH

Short Title: Financial Identity Fraud. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD.

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 19C.

"Financial Identity Fraud.

"**§ 14-113.20. Financial identity fraud.**

(a) A person is guilty of financial identity fraud when the person intends to appropriate unlawfully the financial resources of another person and, without the authorization or consent of that other person, does one of the following:

(1) Obtains or records identifying information that would assist in accessing the financial resources of the other person.

(2) Accesses or attempts to access the financial resources of the other person through the use of identifying information.

(b) The term 'identifying information' as used in this section includes the following:

(1) Social security numbers.

(2) Drivers license numbers.

(3) Checking account numbers.

(4) Savings account numbers.

(5) Credit card numbers.

(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources.

"**§ 14-113.21. Exceptions.**

The prohibitions set forth in G.S. 14-113.20 do not apply to any of the following:

(1) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction.
(2) The lawful, good faith exercise of a security interest or a right to offset by a creditor or financial institution.
(3) The lawful, good faith compliance by any party when required by any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive.

"**§ 14-113.22. Venue of offenses.**

In any criminal proceeding brought under this Article, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"**§ 14-113.23. Punishment and restitution.**

(a) A violation of this Article is punishable as a Class H felony.

(b) In addition to being punished as provided in subsection (a) of this section, a person convicted of financial identity fraud may be ordered by the court to make restitution to any victims of this fraud."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, April 27, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

HB 1227 BULLET-PROOF VEST/COMMIT FELONY. REP. HORN

HB 1228 RESTORATION OF RIGHTS. REP. ADAMS

HB 1144 NEED CONSENT TO TAPE COMMUNICATIONS. REP. MICHAUX

HB 94 SUPERIOR COURT DIVISION ELECTIONS. REP. MICHAUX

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, APRIL 27, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Lindsay Harrell and Christopher Jones, were introduced to the Committee.

The bills on the agenda were HB 1227, sponsored by Rep. Horn, HB 1228, sponsored by Rep. Adams, HB 1144 and HB 94 sponsored by Rep. Michaux.

Rep. Adams was recognized to explain **HB 1228, (Short title: Restoration of Rights).** Staff counsel, Steve Rose, was also recognized to explain the bill. A motion to give the bill a favorable report was made by Rep. Michaux. The motion for a favorable report failed by a vote of 6 to 2.

The Chair recognized Rep. Horn to explain **HB 1227 (Short title: Bullet-Proof Vest/Commit Felony).** Rep. Horn offered a committee substitute to the committee. Rep. Barefoot made a motion to place the Proposed Committee Substitute before the committee for consideration. The Proposed Committee Substitute was identical to a bill that had passed in the Senate. The committee substitute was explained by the bill sponsor, and by staff counsel. Eddie Caldwell of the NC Sheriffs Association and NC Law Enforcement Officers Association spoke in support of the bill. The committee did not vote on the bill at this meeting.

House bills 94 and 1144 were removed from the agenda at the request of the bill sponsor.

The meeting was adjourned.

Members present:

Rep. Braswell	Rep. Michaux	Rep. Barefoot
Rep. Cansler	Rep. Capps	Rep. Hensley
Rep. Kiser	Rep. Russell	Rep. Sherrill

Respectfully Submitted,

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1228

Short Title: Restoration of Rights. (Public)

Sponsors: Representatives Adams; Blue, Fitch, Hardaway, Hunter, McAllister, and Womble.

Referred to: Judiciary II.

April 15, 1999

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, 2000.

HOUSE BILL 1228:
Restoration of Citizenship

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: April 22, 1999
Version: 1

Introduced by: Representative Adams
Summary by: Steven Rose
Committee Counsel

House Bill 1228 amends G.S. 13-1 to restore the rights of citizenship to a person convicted of a crime when they are no longer incarcerated, rather than when they are unconditionally discharged from prison, parole, probation, or a suspended sentence. The act becomes effective January 1, 2000.

Article VI, Section 2 of the North Carolina Constitution provides that a person adjudicated guilty of a felony is not permitted to vote unless that person's citizenship rights have been restored in a manner prescribed by law.

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, probation, or parole. The rights of citizenship are also restored when an offender is pardoned or satisfies the conditions of a conditional pardon.

The amendments to G.S. 13-1 would restore rights of citizenship to any convicted felon who is not serving an active prison sentence.

The act is effective January 1, 2000.

H1228-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1227-PCSRL-001
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE DRH3327*-LH120(3.31)

Short Title: Bullet-Proof Vest/Commit Felony. (Public)

Sponsors: Representative Horn.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENHANCED CRIMINAL PENALTY SHALL BE IMPOSED ON A PERSON WHO IS WEARING OR HAS IN HIS OR HER IMMEDIATE POSSESSION A BULLET-PROOF VEST WHILE COMMITTING A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant possessed a bullet-proof vest during the commission of the felony.

(a) If a person is convicted of a felony and the court finds that the person was wearing or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) This section does not apply if the evidence that the person was wearing or had in his or her immediate possession a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1227*

Short Title: Bullet-Proof Vest/Commit Felony. (Public)

Sponsors: Representatives Horn; Allen, Barefoot, Clary, Dedmon, Edwards, Fox, Haire, Hill, Hurley, Luebke, McCrary, McLawhorn, Redwine, Russell, Thomas, Thompson, Warren, Warwick, Womble, and Yongue.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENHANCED CRIMINAL PENALTY SHALL BE IMPOSED ON A PERSON WHO POSSESSES A BULLET-PROOF VEST WHILE COMMITTING A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant possessed a bullet-proof vest during the commission of the felony.**

(a) If a person is convicted of a felony and the court finds that the person possessed a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1227:
Possession of Bulletproof Vest While Committing Felony

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Representative Horne
Date:	April 23, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 1227 increases felony penalties if the defendant possessed a bulletproof vest at the time of the felony.

House Bill 1227 adds a new G.S. 15A-1340.16C to provide that, if a person is convicted of a felony and the court finds that the person possessed a bulletproof vest at the time of the felony, the person will be guilty of a felony one class higher than the underlying felony. The effect is to increase the punishment. If the evidence that the person possessed a bulletproof vest is a necessary element of proving the underlying crime for which the person was convicted, then this section will not apply.

The act is effective December 1, 1999, and applies to offenses committed on or after that date.

H1227-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 94

Short Title: Superior Court Division Elections. (Public)

Sponsors: Representatives Michaux; and Luebke.

Referred to: Judiciary IV.

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ALLOW ELECTION OF SUPERIOR COURT BY DIVISION, AND TO IMPLEMENT THAT AMENDMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 16 of Article IV of the Constitution of North Carolina reads as rewritten:

"**Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.** Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the ~~State~~ State, by the qualified voters of their judicial division, or by the voters of their respective districts, as the General Assembly may prescribe."

Section 2. Section 11 of Article IV of the Constitution of North Carolina reads as rewritten:

"**Sec. 11. Assignment of Judges.** The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized ~~duty.~~ duty, but regular Judges of Superior Court may be assigned outside of their judicial division only in the case of emergency. The principle of rotating Superior Court Judges among the various districts of a division is

a salutary one and shall be observed. For this purpose the General Assembly ~~may~~ shall divide the State into ~~a number of~~ not less than eight judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge."

Section 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide election on November 2, 1999, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments allowing Judges of Superior Court to be elected by the qualified voters of their judicial division."

Section 4. If a majority of the votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective upon this certification. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 5. G.S. 7A-41.2 reads as rewritten:

"**§ 7A-41.2. Nomination and election of regular superior court judges.**

Candidates for the office of regular superior court judge shall be both nominated and elected by the qualified voters of the superior court ~~district~~ division for which the election is sought."

Section 6. G.S. 163-1 is amended in the table by deleting the words "Superior Court District" in the column entitled "Jurisdiction" under the entry for "Judges of the Superior Court".

Section 7. G.S. 163-140(b)(5) reads as rewritten:

"(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, ~~regular resident superior court judge for the superior court district in which the county is situated,~~ and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party

name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of

elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Section 8(a). G.S. 163-192(a)(3a) reads as rewritten:

"(3a) For superior court judges for the several ~~superior court districts~~ judicial divisions in the State.

Section 8(b). G.S. 163-192(b)(4a) reads as rewritten:

"(4a) For superior court judges for the several superior court ~~districts~~ divisions in the State."

Section 9. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
~~First~~ 1A	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
1A	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
1A	3A	Pitt	2
1B	3B	Carteret, Craven, Pamlico	2
1B	4A	Duplin, Jones, Sampson	1
1B	4B	Onslow	1
1B	5	New Hanover, Pender	3
1A	6A	Halifax	1
1A	6B	Bertie, Hertford, Northampton	1
1A	7A	Nash	1
1A	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
1A	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
1B	8A	Lenoir and Greene	1

1B	8B	Wayne	1
~~Second~~2A	9	Franklin, Granville, Vance, Warren	2
2A	9A	Person, Caswell	1
2A	10A	(part of Wake, see subsection (b))	2
2A	10B	(part of Wake, see subsection (b))	2
2A	10C	(part of Wake, see subsection (b))	1
2A	10D	(part of Wake, see subsection (b))	1
2B	11A	Harnett, Lee	1
2B	11B	Johnston	1
2B	12A	(part of Cumberland, see subsection (b))	1
2B	12B	(part of Cumberland, see subsection (b))	1
2B	12C	(part of Cumberland, see subsection (b))	2
2B	13	Bladen, Brunswick, Columbus	2
2A	14A	(part of Durham, see subsection (b))	1
2A	14B	(part of Durham, see subsection (b))	3
2A	15A	Alamance	2
2A	15B	Orange, Chatham	1
2B	16A	Scotland, Hoke	1
2B	16B	Robeson	2
~~Third~~ 3A	17A	Rockingham	2
3A	17B	Stokes, Surry	2
3B	18A	(part of Guilford, see subsection (b))	1
3B	18B	(part of Guilford, see subsection (b))	1
3B	18C	(part of Guilford, see subsection (b))	1
3B	18D	(part of Guilford, see subsection (b))	1
3B	18E	(part of Guilford, see subsection (b))	1
3B	19A	Cabarrus	1
3B	19B	Montgomery, Moore	2

			Randolph	
	3B	19C	Rowan	1
	3B	20A	Anson, Richmond	12
	3B	20B	Stanly, Union	2
	3A	21A	(part of Forsyth, see subsection (b))	1
	3A	21B	(part of Forsyth, see subsection (b))	1
	3A	21C	(part of Forsyth, see subsection (b))	1
	3A	21D	(part of Forsyth, see subsection (b))	1
	3A	22	Alexander, Davidson, Davie, Iredell	2
	3A	23	Alleghany, Ashe, Wilkes, Yadkin	1
	~~Fourth~~4A	24	Avery, Madison, Mitchell, Watauga, Yancey	1
	4A	25A	Burke, Caldwell	2
	4A	25B	Catawba	2
	4B	26A	(part of Mecklenburg, see subsection (b))	2
	4B	26B	(part of Mecklenburg, see subsection (b))	2
	4B	26C	(part of Mecklenburg, see subsection (b))	2
	4B	27A	Gaston	2
	4B	27B	Cleveland, Lincoln	2
	4A	28	Buncombe	2
	4A	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
	4A	30A	Cherokee, Clay, Graham, Macon, Swain	1
	4A	30B	Haywood, Jackson	1."

Section 10. Sections 5 through 9 of this act become effective only if the qualified voters approve the constitutional amendments proposed by Sections 1 and 2 of this act, and if they are so approved, Sections 5 through 9 of this act become effective beginning with respect to the 2000 election, and Section 9 becomes effective January 1, 2001, for all other purposes.

HOUSE BILL 94:
Superior Court Division Elections

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: April 23, 1999
Version: 1

Introduced by: Representative Michaux
Summary by: Steven Rose
Committee Counsel

House Bill 94 provides for an election to amend the North Carolina Constitution to permit Superior Court Judges to be elected by Judicial Division. It also changes the number of judicial divisions and assigns Superior Court Districts to these divisions.

Section 1 of the bill amends Section 16 of Article IV of the North Carolina Constitution. Presently, regular judges of the Superior Court may be elected by the voters of the State or the voters of their district, as the General Assembly may prescribe. The amendment adds election by judicial division as a third option.

Section 2 of the bill amends Section 11 of Article IV of the North Carolina Constitution. Section 11 prescribes how assignments of judges are made, that Superior Court judges are to be rotated among the districts of a division, and that the State may be divided into a number of judicial divisions. The amendments would add a provision that regular judges of Superior Court may be assigned outside their judicial division only in the case of emergency. The section is also amended to change the current provision that the General Assembly may divide the State into a number of judicial divisions, to a provision that the General Assembly shall divide the State into not less than eight judicial divisions.

Section 3 provides that the proposed constitutional amendments will be submitted to the voters at a statewide election on November 2, 1999.

Section 4 provides that the constitutional amendments become effective upon the Board of Elections certifying their approval to the Secretary of State.

Section 5 amends G.S. 7A-41.2. Presently, that statute provides that candidates for the office of regular Superior Court Judge are nominated and elected in their Superior Court district. The amendment would provide that they are nominated and elected in their Superior Court division.

Section 6 amends G.S. 163-1 by eliminating the jurisdictional designation of Superior Court district for judges of the Superior Courts. Thus, the area in which they are elected will be the division for which they seek election, as provided in amended G.S. 7A-41.2.

Section 7 makes a technical correction to G.S. 163-140(b)(5).

Sections 8(a) and (b) make conforming amendments to G.S. 163-192(a)(3a) and G.S. 163-192(b)(4a).

Section 9 amends G.S. 7A-41(a) by changing the judicial divisions from four to eight and assigning Superior Court districts to those divisions.

Sections 5 through 9 become effective only if the constitutional amendments are approved. They become effective beginning with respect to the 2000 election, and Section 9 becomes effective January 1, 2001 for all other purposes.

H94-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1144

Short Title: Need Consent to Tape Communication. (Public)

Sponsors: Representative Michaux.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RECORDING OF COMMUNICATIONS WITHOUT CONSENT.

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:

"**§ 14-394.1. No recording of communications without consent.**

(a) Every person who, intentionally and without the express consent of all parties to a communication, by means of any electronic or other recording device, records any communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, is guilty of a Class I felony.

(b) Any person whose communications, whether the communications are carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, is recorded intentionally and without the express consent of all parties to the communication, may in a civil action recover from the person who recorded such communications such relief as may be appropriate, including a reasonable attorney's fee and other litigation costs incurred.

(c) The term 'communication' includes any oral or spoken communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, cellular or cordless telephone, two-way radio, or other device, regarding or relating to the transaction of interstate or intrastate commerce, regardless of whether for profit or otherwise.

(d) This section does not apply to any telephonic communication system used for communication exclusively with a State, county, city and county, or city correctional facility.

(e) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance or monitoring of any conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, or any suspected fraudulent scheme, conduct, or activity involving violation of law or pattern of practice threatening to adversely affect the public health and safety."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1144:
Need Consent to Tape Communication

BILL ANALYSIS

Committee: House Judiciary II
Date: April 27, 1999
Version: First Edition

Introduced by: Representative Michaux
Summary by: Robin S. Johnson
Committee Counsel

SUMMARY: House Bill 1144 would make it a Class I felony for any person to record any communication. The recording must be made intentionally and without the express consent of all parties to any oral or spoken communication. The communication may be among the parties in the presence of one another or by telegraph, telephone, two-way radio, or other device. The bill specifically provides that it would not apply to any telephonic communication system used exclusively with a correctional facility. It also provides that it would not impair or limit any otherwise lawful activities of law enforcement personnel or governmental employees during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity.

A person whose communication is recorded intentionally and without the consent of all parties would be authorized to seek appropriate relief, including reasonable attorney's fees and other costs, in a civil action against the person who recorded the communication.

The presumptive required minimum punishment for a Class I felony, assuming no prior record, is 4-6 months of community punishment.

The bill would become effective December 1, 1999, and would apply to offenses committed on or after that date.

CURRENT LAW: Current State law (see attached) makes it a Class H felony for a person to record a communication without the consent of at least one party to the communication. The presumptive required minimum punishment for a Class H felony, assuming no prior record, is 5-6 months of community service, intermediate punishment, or active incarceration. A variety of entities are exempt from this law that governs electronic surveillances.

ISSUES: This bill appears to conflict with current law. Also, there is a similar bill (HB 1194) which is on the House Judiciary I Committee's agenda this morning.

H1144-SMRH-001

§ 15A-287. Interception and disclosure of wire, oral, or electronic communications prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if, without the consent of at least one party to the communication, the person:

(1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.

(2) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

a. The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communications; or

b. The device transmits communications by radio, or interferes with the transmission of such communications.

(3) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through violation of this Article; or

(4) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Article.

(b) It is not unlawful under this Article for any person to:

(1) Intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) Intercept any radio communication which is transmitted:

a. For use by the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communication system, including police and fire, readily available to the general public;

c. By a station operating on any authorized band within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communication system; or

(3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.

(c) It is not unlawful under this Article for an operator of a switchboard, or an officer, employee, or agent of a provider of electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, provided that a

provider of wire or electronic communication service may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony.

(f) Any person who shall, knowingly or with gross negligence, divulge the existence of or contents of any electronic surveillance order in a way likely to hinder or thwart any investigation or prosecution relating to the subject matter of the electronic surveillance order or anyone who shall, knowingly or with gross negligence, release the contents of any wire, oral, or electronic communication intercepted under an electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as is required or allowed by law, shall be guilty of a Class 1 misdemeanor.

(g) Any public officer who shall violate subsection (a) or (d) of this section or who shall knowingly violate subsection (e) of this section shall be removed from any public office he may hold and shall thereafter be ineligible to hold any public office, whether elective or appointed.

(1995, c. 407, s. 1.)

§ 15A-261. Prohibition and exceptions.

(a) In General. - Except as provided in subsection (b) of this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order as provided in this Article.

(b) Exception. - The prohibition of subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

(1) Relating to the operation, maintenance, or testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(3) With the consent of the user of that service.

(c) Penalty. - A person who willfully and knowingly violates subsection (a) of this section is guilty of a Class 1 misdemeanor.

(1987 (Reg. Sess., 1988), c. 1104, s. 1; 1993, c. 539, s. 297; 1994, Ex. Sess., c. 24, s. 14(c).)

VISITOR REGISTRATION SHEET DATE 27 APRIL 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
EDDIE CALDWELL	NC Sheriffs Assn/ NC Law Enf Off Assn
JOE FOSTER	6R Service Corp.
Jeff VAN DYKE	BELLSOUTH
Willie Riddick	DOR
Melissa Lovell	DOJ
Bryan Beatty	DOJ
[illegible]	NCAM
[illegible]	NC Bar
Carolyn Calloway	
[illegible]	NCRMA
THOMAS BEATTIE	GRASS ROOTS NORTH CAROLINA
Jeff Rau	Grass Roots NC
Kevin Howell	Governor's office
BRIAN HOUCK	BELLSOUTH
[illegible]	[illegible]
[illegible]	G.R. N.C.
[illegible]	Capitol Group
A.A. Adams	Tuition Advocate
David Ferrell	HMC CCG, PA
[illegible]	NCSSA

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, May 11, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 414 CLOSE LOOPHOLE MIN. HOUS. STAND. SENATOR KINNAIRD

SB 483 AMEND FOREIGN CORP. LAW. SENATOR CLODFELTER

SB 525 PERSONAL REP. QUALIFICATIONS. SENATOR HAGAN

SB 527 EMERGENCY TRAFFIC ORDINANCES. SENATOR HARTSELL

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, MAY 11, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and Sharon Bell and Shameka Barnes were introduced as the Pages assisting the committee.

The bills on the agenda were SB 414, sponsored by Senator Kinnaird, SB 484, sponsored by Senator Clodfelter, SB 525, sponsored by Senator Hagan, and SB 527, sponsored by Senator Hartsell.

Senator Hagan was recognized to present **SB 525 (Short title: Personal Rep. Qualifications).** (Refer to Exhibit I). Rep. Sherrill moved to have the Proposed Committee Substitute for SB 525 brought before the Committee. (Refer to Exhibit II).
Staff commented on the bill, and Jean Carter of the NC Bar Association spoke on the bill. Rep. Michaux made a motion for a favorable report of the Proposed Committee Substitute. The Committee gave the Proposed Committee Substitute a favorable report and an unfavorable report to the original bill.

Senator Kinnaird was recognized to explain **SB 414 (Short title: Close Loophole Min. Hous. Stand).** Rep. Michaux moved to amend the bill. He was recognized to explain the amendment. The Chairman called for a vote on the amendment and the amendment failed. Bill Rowe of the NC Low Income Housing Municipalities, and Andy Romanet, of the League of Municipalities spoke on the bill. Rep. Sherrill made a motion for an unfavorable report. Senator Kinnaird spoke again on the bill. Andy Romanet spoke in support of the bill. The motion by Rep. Sherrill for an unfavorable report was withdrawn to allow Staff an opportunity to gather further information regarding the concerns raised by the committee members. The Chair requested that Staff address the concerns raised by the committee members.

Rep. Hensley made a motion to adjourn. The meeting was adjourned.

Members Present:

Rep. Braswell	Rep. Michaux	Rep. Hensley
Rep. Jarrell	Rep. Cansler	Rep. Capps
Rep. Barefoot	Rep. Kiser	Rep. Crawford
Rep. Russell	Rep. Sherrill	

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

S/12

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 525 A BILL TO BE ENTITLED AN ACT TO ALLOW NON-UNITED STATES CITIZENS WHO ARE RESIDENTS OF NORTH CAROLINA TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

S525-HPCSRL-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL 525

Short Title: Personal Rep. Qualifications. (Public)

Sponsors:

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW NON-UNITED STATES CITIZENS TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-4-2 reads as rewritten:

"**§ 28A-4-2. Persons disqualified to serve as personal representative.**

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a

personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

~~(6) Is an alien disqualified by law;~~

(7) Has lost his rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

Exhibit I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 525

Short Title: Personal Rep. Qualifications. (Public)

Sponsors: Senator Hagan.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW NON-UNITED STATES CITIZENS WHO ARE RESIDENTS OF NORTH CAROLINA TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

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Section 1. G.S. 28A-4-2 reads as rewritten:

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(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

~~(6) Is an alien disqualified by law;~~

(7) Has lost his rights as provided by Chapter 31A;

(8) Is illiterate;
(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 525
Proposed House Committee Substitute S525-PCS1736-RL

Short Title: Personal Rep. Qualifications. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW NON-UNITED STATES CITIZENS TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-4-2 reads as rewritten:

"**§ 28A-4-2. Persons disqualified to serve as personal representative.**

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

~~(6) Is an alien disqualified by law;~~

(7) Has lost his rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

SENATE BILL 525:
Personal Representative Qualifications

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: May 5, 1999
Version: 1

Introduced by: Senator Hagan
Summary by: Steven Rose
Committee Counsel

Senate Bill 525 amends G.S. 28A-4-2 by eliminating a provision stating that a person who is an alien disqualified by law may not serve as a personal representative in the administration of an estate. The act is effective January 1, 2000 and applies to estates of decedents dying on or after that date.

G.S. 28A-4-2 lists the persons who are not qualified to serve as personal representatives. In that list are persons who are aliens "disqualified by law." There is no explanation in the statute, or elsewhere, indicating what the term "disqualified by law" means. According to the North Carolina Bar Association and its Estate Planning and Fiduciary Law Section, this has caused confusion among practitioners and among Clerks of Court who must apply the statute. By eliminating the provision, the status of an alien will not automatically disqualify someone from serving as a personal representative. The person will still have to meet all other qualifications and the Clerk of Superior Court can disqualify a person who the clerk "finds otherwise unsuitable." In addition, any personal representative who is not a resident of the State must appoint someone authorized to receive legal process on that person's behalf.

S525-SMRL-001

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

8000 Weston Parkway
Post Office Box 3688
Cary, North Carolina 27519-3688
919.677.0561/800.662.7407
facsimile 919.677.0761
http://www.barlinc.org

Senate Bill 525 - Personal Representative Qualifications

The North Carolina Bar Association and its Estate Planning and Fiduciary Law Section recommend a change to N.C.G.S. §28A-4-2 to address a difficulty encountered in the administration of certain estates. The current statute says an "alien disqualified by law" cannot serve as personal representative.

This creates problems, in that:

- Many residents in North Carolina are not U.S. Citizens, but are subject to United States and North Carolina law;
- A strict reading of the current statute forces them to employ a non-family member as executor and pay that individual executor's commissions;
- An awkward situation arises where the widow/widower is unable to service as executor for his/her deceased spouse; and
- Clerks of Court do not evenly apply or understand the current statute, and confusion is created for practitioners.

The Solution is to permit non-U.S. citizens to serve IF they otherwise qualify. All non-North Carolina residents must appoint a resident agent anyway. Additionally, the court still has power to disallow service by anyone it finds "unsuitable."

The North Carolina Bar Association recommends passage of this important legislation.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 414

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

S414-ARH-001

Date May 11 ,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Michaux

moves to amend the bill on page 1, line 19, and on page 2, lines 3 and 18,
by deleting "one year" and by substituting "~~one year~~ three months";

and on page 2, line 31, by deleting "wihin" and by substituting "within".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 414

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision

(3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling wihin 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census."

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

SENATE BILL 414:
Close Loophole Min. Hous. Stand.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Kinnaird
Date:	May 6, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: This bill would amend the law that sets out the procedures cities must follow when ordering the repair or demolition of substandard housing. It would add 27 counties to the list of counties in which municipalities can order the demolition of a dwelling one year after it has been abandoned. Before a municipality can exercise this authority the following must occur:

- *The owner of the property was provided notice and a hearing.*
- *A hearing officer determined that the dwelling was unfit for human habitation, made written findings of fact, and issued an order that was served on the owner that ordered the owner to repair or close the dwelling,*
- *The dwelling has been closed for one year.*
- *The municipal governing body has determined that the owner has abandoned the intent to repair the dwelling.*
- *The municipal governing body has found that the closed status would be inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire hazard, and threat to children and vagrants, and would attract persons intent on criminal activity.*

The bill would take effect when it becomes law.

CURRENT LAW: In general, all cities regardless of size must follow the following procedures before they can order the repair or demolition of a dwelling:

- Pass an ordinance that: (i) finds that substandard housing conditions exist; (ii) designates a public officer to deal with the situation.
- Investigate an allegation that a dwelling is unfit for human habitation.
- Issue a complaint, serve the complaint, and schedule a hearing between 10 to 30 days of the issuance of the complaint.
- Conduct a hearing before the public officer or her designee.
- Have the hearing officer render a decision and order, including findings of fact.
- If the dwelling can be repaired at reasonable cost, order the repair or demolition of the dwelling within a "time specified." If it cannot be repaired at reasonable cost, order the demolition of a dwelling within a "time specified."

If, after following the procedures outlined above, the owner fails to comply with the order to repair, a difference develops in how municipalities can proceed to demolish a dwelling. Any municipality can pass an ordinance that orders the public officer to repair or demolish the dwelling; however, the municipality cannot demolish the building until the owner is first given a "reasonable opportunity" to conform to the housing code. In addition, municipalities in counties with more than 163,000 residents can pass an ordinance ordering demolition of the building if it finds a year has gone by since the owner was ordered to

fix or vacate the dwelling, the dwelling has been closed for that year, the dwelling is in effect a public nuisance, and the owner has abandoned the intent to repair the dwelling.

BILL ANALYSIS: The bill would increase the number of municipalities that would be authorized to use the alternative method of ordering demolishment of abandoned dwellings after an order was issued to repair them. Currently, this authority extends to municipalities in counties with more than 163,000 residents according to the last federal census. The bill would extend this authority to municipalities in counties with more than 58,000 residents according to the last federal census.

According to the last federal census, the bill would extend this authority to municipalities in 27 additional counties. The next census will be done next year and is likely to result in the addition of several more counties.

S414-SMRH-001

Summary contributed to by Ed Rossi, Senate JII Committee Counsel

LINC Rankings Report N.C. State Data Center 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
1	MECKLENBURG COUNTY	511,481
2	WAKE COUNTY	426,301
3	GUILFORD COUNTY	347,420
4	CUMBERLAND COUNTY	274,713
5	FORSYTH COUNTY	265,878
6	DURHAM COUNTY	181,854
7	GASTON COUNTY	175,093
8	BUNCOMBE COUNTY	174,819
9	ONSLOW COUNTY	149,838
10	DAVIDSON COUNTY	126,677
11	NEW HANOVER COUNTY	120,284
12	CATAWBA COUNTY	118,412
13	ROWAN COUNTY	110,605
14	PITT COUNTY	108,480
15	ALAMANCE COUNTY	108,213
16	RANDOLPH COUNTY	106,546
17	ROBESON COUNTY	105,170
18	WAYNE COUNTY	104,666
19	CABARRUS COUNTY	98,935
20	ORANGE COUNTY	93,851
21	IREDELL COUNTY	92,935
22	ROCKINGHAM COUNTY	86,064
23	CLEVELAND COUNTY	84,713
24	UNION COUNTY	84,210
25	CRAVEN COUNTY	81,613
26	JOHNSTON COUNTY	81,306
27	NASH COUNTY	76,677
28	BURKE COUNTY	75,740
29	CALDWELL COUNTY	70,709
30	HENDERSON COUNTY	69,285
31	HARNETT COUNTY	67,833
32	WILSON COUNTY	66,061
33	SURRY COUNTY	61,704
34	WILKES COUNTY	59,393
35	MOORE COUNTY	59,000
36	LENOIR COUNTY	57,274
37	RUTHERFORD COUNTY	56,918
38	EDGECOMBE COUNTY	56,692
39	HALIFAX COUNTY	55,516
40	CARTERET COUNTY	52,553
41	STANLY COUNTY	51,765
42	BRUNSWICK COUNTY	50,985
43	LINCOLN COUNTY	50,319
44	COLUMBUS COUNTY	49,587
45	SAMPSON COUNTY	47,297
46	HAYWOOD COUNTY	46,942
47	RICHMOND COUNTY	44,518
48	BEAUFORT COUNTY	42,283

LINC Rankings Report N.C. State Data Center 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
49	LEE COUNTY	41,370
50	DUPLIN COUNTY	39,995
51	VANCE COUNTY	38,892
52	CHATHAM COUNTY	38,759
53	GRANVILLE COUNTY	38,341
54	STOKES COUNTY	37,223
55	WATAUGA COUNTY	36,952
56	FRANKLIN COUNTY	36,414
57	MCDOWELL COUNTY	35,681
58	SCOTLAND COUNTY	33,763
59	PASQUOTANK COUNTY	31,298
60	YADKIN COUNTY	30,488
61	PERSON COUNTY	30,180
62	PENDER COUNTY	28,855
63	BLADEN COUNTY	28,663
64	DAVIE COUNTY	27,859
65	ALEXANDER COUNTY	27,544
66	JACKSON COUNTY	26,846
67	TRANSYLVANIA COUNTY	25,520
68	MARTIN COUNTY	25,078
69	MACON COUNTY	23,499
70	ANSON COUNTY	23,474
71	MONTGOMERY COUNTY	23,352
72	HOKE COUNTY	22,856
73	DARE COUNTY	22,746
74	HERTFORD COUNTY	22,523
75	ASHE COUNTY	22,209
76	NORTHAMPTON COUNTY	20,798
77	CASWELL COUNTY	20,693
78	BERTIE COUNTY	20,388
79	CHEROKEE COUNTY	20,170
80	WARREN COUNTY	17,265
81	MADISON COUNTY	16,953
82	YANCEY COUNTY	15,419
83	GREENE COUNTY	15,384
84	AVERY COUNTY	14,867
85	MITCHELL COUNTY	14,433
86	POLK COUNTY	14,416
87	WASHINGTON COUNTY	13,997
88	CURRITUCK COUNTY	13,736
89	CHOWAN COUNTY	13,506
90	PAMLICO COUNTY	11,368
91	SWAIN COUNTY	11,268
92	PERQUIMANS COUNTY	10,447
93	ALLEGHANY COUNTY	9,590
94	JONES COUNTY	9,414
95	GATES COUNTY	9,305
96	GRAHAM COUNTY	7,196

LINC Rankings Report N.C. State Data Center 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
97	CLAY COUNTY	7,155
98	CAMDEN COUNTY	5,904
99	HYDE COUNTY	5,411
100	TYRRELL COUNTY	3,856

VISITOR REGISTRATION SHEET DATE 11 MAY 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TROY PEOPLES	NCDOT
Ruth Sabiere	NCDOT
Carl Williams	NCCHIEFS A
Andy Romanet	NCLM.
Lauch Hartsell	NCBA
Sam Carter	NCBA
Kim Hibbard	NCLM
TOM MOSS	NC POLICE CHIEFS
Charles Wilkins	NC " "
Eddie Caldwell	NC Law Enf Off Assn / NC Sheriffs Assn
Pamela Weaver Best	AOC
Stitch Hartsell Jr.	NC SENATE
Linda Law	NC Low Income Housing Coalition
Bill Rowe	NC Justice Center
DON HOBART	Attorney General / N.C. Bus Laws - Economy Comm.
Dan Clodfelter	NC Senate
Ellie Kinnaird	NC Senate
[illegible]	[illegible]
Robert E Cansler	NC Police Chiefs

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Thursday, May 13, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 483 AMEND FOREIGN CORP. LAW. SENATOR CLODFELTER

SB 527 EMERGENCY TRAFFIC ORDINANCES. SENATOR HARTSELL

SB 773 CLARIFY ANNEXATION REMAND. SENATOR CLODFELTER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, MAY 13, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and Edward Gregory and Rodger Basnight were introduced as the Pages assisting the committee.

The bills on the agenda were SB 483, sponsored by Senator Clodfelter, SB 527, sponsored by Senator Hartsell and SB 773, sponsored by Senator Clodfelter.

SB 527 (Short title: Emergency Traffic Ordinances). Senator Hartsell asked that this bill be removed from the agenda.

Senator Clodfelter was recognized to explain **SB 483 (Short Title: Amend Foreign Corp. Law).** Rep. Barefoot moved for a favorable report. The committee gave the bill a favorable report.

Senator Clodfelter was then recognized to explain **SB 773 (Short title: Clarify Annexation Remand).** Bill Scoggins of the North Carolina Bar Association spoke on the bill. Action on this bill was delayed until a later date.

A motion was made for adjournment and the meeting was adjourned.

Members Present:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Crawford	Rep. Jarrell
Rep. Kiser	Rep. Russell	Rep. Sherrill

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

DRAFT

S

S527-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 527
THIS IS A DRAFT 6-MAY-99 10:01:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors:

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS ON CITY STREETS AND STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles to preempt any traffic control devices, signs, or signals upon city streets or State highways within local government boundaries.

Signs shall be erected giving notices of ~~such~~ the special limits and ~~regulations.~~ regulations under subdivisions (1) through (4) of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 527

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices and for the preemption of any signaling devices upon city streets or state highways within local government boundaries by the emergency vehicles set forth in G.S. 20-157 on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

Signs shall be erected giving notices of ~~such~~ the special limits and regulations."

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

SENATE BILL 527:
Emergency Traffic Ordinances

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 6, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition - PCS S527-CSRH-001		Committee Counsel

SUMMARY: The proposed committee substitute, which makes technical changes, would allow local authorities to adopt ordinances that allow police or fire department vehicles, ambulances, and rescue squad vehicles to preempt any traffic signaling device on a city street or State highway within their geographic boundaries.

The bill would take effect when it becomes law.

CURRENT LAW: Local authorities include counties, municipalities, and every other "territorial district with a local board or body having authority to adopt local police regulations". These entities currently have the authority to provide by ordinances for the following:

- Speed limits different from State-authorized speed limits on streets within their respective jurisdictions.
- The regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous.
- The prohibition of other than one-way traffic on certain highways.
- The use of highways by processions or assemblages.
- Speed limits for vehicles on highways in public parks.
- Speed limits on school property.

They must post signs that give notice of these special limits and regulations.

Local authorities (on highways under their jurisdiction) and the Department of Transportation (on State highways) are authorized to erect or install stop signs, stop lights, and other traffic control devices, signs, and signals.

Any local authority may ask the DOT Division Engineer to authorize the use of a device that would preempt traffic signals. The Division Engineer evaluates the device and, if approved, requires the local authority to enter into a maintenance agreement, which covers the applicable traffic signals and their control boxes.

Currently, drivers are required to yield the right-of-way to police and fire department vehicles, ambulances, vehicles used to transport human tissues and organs for transplantation, rescue squad emergency service vehicles, and vehicles operated by county fire marshals and civil preparedness coordinators. With some restrictions, these vehicles also are allowed to proceed without stopping through red lights and stop signs.

BILL ANALYSIS: The proposed committee substitute would allow local authorities to adopt ordinances that would allow the preemption of traffic signals by police and fire department vehicles, ambulances, a rescue squad emergency service vehicles. This would allow these vehicles to be equipped with a devi that would send a signal to upcoming traffic signals. The device, in essence, would tell the traffic signals to turn green by the time the emergency vehicle reaches the intersection. An ordinance would apply to signaling devices on city streets and State highways within the local government's boundaries.

S527-SMRH-001

Summary contributed to by Jo McCants, Senate Judiciary I Committee Counsel

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 483 A BILL TO BE ENTITLED AN ACT TO REVISE THE LAW GOVERNING THE LIMITATIONS OF SUCCESSORS AND ASSIGNEES OF FOREIGN CORPORATIONS AND FOREIGN NONPROFIT CORPORATIONS TO FILE CAUSES OF ACTION OR PROCEEDINGS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 483

Short Title: Amend Foreign Corp. Law. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 24, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE LIMITATIONS OF SUCCESSORS AND ASSIGNEES OF FOREIGN CORPORATIONS AND FOREIGN NONPROFIT CORPORATIONS TO FILE CAUSES OF ACTION OR PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-15-02(a) reads as rewritten:

"(a) No foreign corporation transacting business in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless ~~such~~ the foreign corporation ~~shall have~~ has obtained a certificate of authority prior to ~~trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the transaction of business by such corporation in this State until:~~

~~(1) A certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired substantially all of its assets, or~~

~~(2) Substantially all of its assets have been acquired by a domestic corporation or one or more individuals.~~ trial.

An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial."

Section 2. G.S. 55A-15-02(a) reads as rewritten:

"(a) No foreign corporation conducting affairs in this State without permission obtained through a certificate of authority under this Chapter or through domestication under prior acts shall be permitted to maintain any action or proceeding in any court of this State unless ~~each~~ the foreign corporation ~~shall have~~ has obtained a certificate of authority prior to ~~trial; nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any cause of action arising out of the conduct of affairs by such corporation in this State until:~~

~~(1) A certificate of authority shall have been obtained by the corporation or by a foreign entity which has acquired substantially all of its assets and is entitled to obtain a certificate of authority; or~~

~~(2) Substantially all of its assets have been acquired by a foreign entity which is not entitled to obtain a certificate of authority by a domestic corporation or by one or more individuals.~~ trial.

An issue arising under this subsection ~~shall~~ must be raised by motion and determined by the trial judge prior to trial."

Section 3. This act becomes effective October 1, 1999, and applies to causes of action or proceedings filed on or after that date.

SENATE BILL 483:
Amend Foreign Corporation Law

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Clodfelter
Date:	May 6, 1999	**Summary by:**	Steven Rose Committee Counsel

Senate Bill 483 amends the Business Corporation Act (Chapter 55) and the Non-Profit Corporation Act (Chapter 55A) by eliminating the requirement that the corporate predecessor of a successor corporation must have a certificate of authority to do business in the Sate in order for the successor corporation to maintain an action in the courts of the State. The act becomes effective October 1, 1999 and applies to causes of action or proceedings filed on or after that date.

Under the present corporate laws, a corporation who is an assignee of another corporation cannot maintain a cause of action in this State unless the other corporation has obtained a certificate of authority to do business. This applies even though the successor corporation has obtained authority to do business in the State. Here is an example of how the present law would work:

> Corporation A, an out-of-state company, lends money to a North Carolina resident to buy a car. Corporation A has not obtained a certificate of authority from the Secretary of State. Corporation A assigns the note to Corporation B which does have a certificate of authority to do business in the State. The person who borrowed the money defaults and Corporation B seeks to collect the debt in a North Carolina court. Corporation B will not be allowed to maintain its action until Corporation A obtains a certificate of authority to do business from the Secretary of State.

The amendments contained in Senate Bill 483 would eliminate the requirement that Corporation A must obtain a certificate of authority to do business in the State in order for Corporation B to maintain an action in the courts of this State.

S483-SMRL-001

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Senate Bill 483 Amend Foreign Corporation Law

This proposal amends the Business Corporation Act to allow foreign corporations to bring an action in a North Carolina court on a contract under which it received its right from a corporation not qualified to do business in North Carolina. This legislation corrects an inequity in current law which precludes an otherwise qualified foreign corporation that takes an assignment of rights from an unqualified foreign corporation (a corporation which has not obtained a certificate of authority from the Secretary of State) from accessing the courts of this state to enforce the rights granted.

A foreign corporation must first obtain a certificate of authority from the Secretary of State before transacting business in North Carolina. If it fails to do so, it cannot bring suit in the North Carolina courts unless and until it complies with that requirement. That is standard law in most state and is codified in the first clause of the first sentence of G.S. §55-15-02(a).

The second clause of that first sentence goes further and provides that no assignee of such a foreign corporation can bring suit in North Carolina on any matter arising out of the business done by that foreign corporation unless the foreign corporation obtains a certificate of authority or the assignee has bought substantially all of the foreign corporation's assets. This position was judicially acknowledged in *LeasecommCorp. v. Renaissance Auto Care, Inc.*, 122 N.C. App. 119, 468 S.E.2d 562 (1996).

The purpose of disqualifying assignees of foreign corporations from enforcing their rights was arguably to encourage foreign corporation to comply with the statute. However, The Secretary of State has other far more effective sanctions to compel compliance, and the broadness of the disqualification (as shown by the *Leasecomm* case) is a serious unintended flaw. SB 483 corrects this flaw, which affects a large number of assignments of contracts (such as loan pools, equipment leases, etc.).

The North Carolina Bar Association and the Governor's Commission on Business Laws and the Economy recommend passage of this important legislation.

William G. Scoggin, Director of Governmental Affairs
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 773

Short Title: Clarify Annexation Remand. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-50(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 2. G.S. 160A-38(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 3. This act is effective with respect to ordinances remanded on or after October 1, 1999.

SENATE BILL 773:
Clarify Annexation Remand

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Clodfelter
Date:	May 13, 1999	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

Senate Bill 773 clarifies the time a city has to take action after a court has remanded an appeal of an annexation ordinance.

Current law requires a city to act on a remand from the court of an appeal on an annexation ordinance within three months from receipt of the court's instructions, otherwise the annexation proceeding is deemed void.

Senate Bill 773 clarifies the time period for actions to be taken by the city after a remand by the court. It clarifies the time to be 90 days instead of three months and clarifies that the time begins to run the date of the entry of the order of the court's instruction instead of from receipt of the instructions.

The bill becomes effective October 1, 1999 and applies to ordinances remanded on or after that date.

S773-SMRL-001

VISITOR REGISTRATION SHEET DATE 13 MAY 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS
Bill Scoggin	NC Bar Assoc
LE Hartsell	NC Bar Assoc.
Charles Watkins	NC Assn Chiefs Police
Andy Vanore	NCCM

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, May 18, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 773 CLARIFY ANNEXATION REMAND. SENATOR CLODFELTER

SB 654 MANUFACTURED HOME LAW RESTORATION. SENATOR GULLEY

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, MAY 18, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and Kathy Nida of Warren County was introduced as the Page assisting the committee.

The bills on the agenda were SB 773 sponsored by Senator Clodfelter, SB 654, sponsored by Senator Gulley, and SB 830, sponsored by Senator Miller.

SB 654 and SB 830 were postponed per request of the bill sponsors.

Senator Clodfelter was not available to appear before the Committee for SB 773.

There being no further business before the Committee, the meeting was adjourned on the motion of Rep. Michaux.

Members Present:

Rep. Braswell	Rep. Michaux	Rep. Hensley
Rep. Jarrell	Rep. Cansler	Rep. Capps
Rep. Barefoot	Rep. Kiser	

Blinda Edwards
Committee Assistant

Rep. Braswell, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 654
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Manufactured Home Law Restoration. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-25.9(b) reads as rewritten:

"(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e2), 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress."

Section 2. G.S. 42-25.9(g) reads as rewritten:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the ~~premises.~~ premises, except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this

Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located."

Section 3. G.S. 42-36.2(b) reads as rewritten:

"(b) Sheriff May Store Property. -- When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. ~~Within~~ Except for the disposition of manufactured homes as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale."

Section 4. G.S. 42-36.2(d) reads as rewritten:

"(d) Notice. -- The notice required by subsection (a) ~~shall~~ shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Section 5. G.S. 44A-2 is amended by adding a new subsection to read:

"(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21-day period, the landlord shall release possession of the personal property and manufactured home to the tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien has attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor or the lessor's agent and the tenant that the lessor shall not have a lien."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 773

Short Title: Clarify Annexation Remand. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-50(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 2. G.S. 160A-38(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 3. This act is effective with respect to ordinances remanded on or after October 1, 1999.

SENATE BILL 773:
Clarify Annexation Remand

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Clodfelter
Date:	May 13, 1999	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

Senate Bill 773 clarifies the time a city has to take action after a court has remanded an appeal of an annexation ordinance.

Current law requires a city to act on a remand from the court of an appeal on an annexation ordinance within three months from receipt of the court's instructions, otherwise the annexation proceeding is deemed void.

Senate Bill 773 clarifies the time period for actions to be taken by the city after a remand by the court. It clarifies the time to be 90 days instead of three months and clarifies that the time begins to run the date of the entry of the order of the court's instruction instead of from receipt of the instructions.

The bill becomes effective October 1, 1999 and applies to ordinances remanded on or after that date.

S773-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"**§ 20-354. Short title.**

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"**§ 20-354A. Scope and application.**

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons performing motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop when performing only minor repair services.

(6) Any person or motor vehicle repair shop performing repairs on commercial construction equipment.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Division' means the Division of Motor Vehicles.

(3) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(4) 'Final estimate' means the last estimate approved by the customer, either in writing or orally, as evidenced by the written repair estimate.

(5) 'Minor repair service' includes any of the following:

a. Repairing and changing tires.

b. Lubricating vehicles.

c. Cleaning, adjusting, and replacing spark plugs.

d. Changing oil and oil filters.

e. Replacing, adjusting, repairing, or servicing hoses and air filters.

f. Changing or otherwise servicing any of the following:

1. Coolant.

2. Automatic door lamp switch.

3. Battery, battery ground cable, battery hold-down strap, battery positive cable, and battery-to-starter relay cable.

4. Fan and alternator drive belts.

5. Fuses.

6. Headlamp foot dimmer.

7. Horns.

8. Ignition coil output wire.

9. Light bulbs and headlamps.

10. Ornamental accessories.

11. Power steering pump belt.

12. Wheels, except alignment.
13. Windshield washer tank.
14. Wiper blades.
15. Any other minor service which the Division has designated by rule may be performed by persons without skills and knowledge required of motor vehicle mechanics and helpers. No service shall be considered as minor if the Division finds that the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.

(6) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(7) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

(8) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed one hundred dollars ($100.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily

charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of three working days from the date of the notification.

(b) The information required by subsection (a) need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtains a written authorization to prepare an estimate if there is a charge for that estimate. No motor vehicle repair shop shall impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop.

"§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following apply, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair after being advised that a repair which he or she has authorized cannot be accomplished within the previously authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless either of the following apply:

(1) The customer waives reassembly.

(2) The reassembled vehicle would be unsafe.

After cancellation of the repair order, the shop may charge for the cost of teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the estimate prior to commencement of the diagnostic work.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate plus ten percent (10%), unless the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsection (a) of this section.

(d) It shall be unlawful for any motor vehicle repair shop to fail to return any customer's motor vehicle because the customer has refused to pay for repair charges that exceed a written estimate by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate plus the ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"**§ 20-354F. Invoice required of motor vehicle repair shop.**

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"**§ 20-354G. Required disclosure; signs; notice to customers.**

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That if the cost of repairs will exceed one hundred dollars ($100.00) that the consumer has a right to a written estimate and may waive the right to the written estimate.
(2) The toll-free telephone number of the Division for consumer information and assistance.
(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.
(2) Misrepresent that repairs have been made to a motor vehicle.
(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.
(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.
(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
(11) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Willfully depart from or disregard accepted practices and professional standards.
(13) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee

demonstrates that the customer could not reasonably have been notified.

(14) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(15) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court."

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

SENATE BILL 830:
Auto Repair Work Disclosures

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Miller
Date:	May 18, 1999	**Summary by:**	Robin S. Johnson
Version:	Third Edition		Committee Counsel

SUMMARY: **Senate Bill 830** would create the North Carolina Motor Vehicle Repair Act. The Act would require motor vehicle repair shops to adhere to the following concerning repairs and repair estimates:

- Unless waived by the customer in writing, the shop must prepare a written estimate, when the estimated cost of repair is more than $100, before doing any diagnostic work or repair. (The waiver can be for a period of time). The estimate must disclose any vehicle storage charges and that the customer can ask for replaced parts to be saved for inspection or return. There can be no storage charges until after the third day following the date the customer is notified the repairs are complete. A shop that does not agree to perform the repair work would not be required to do an estimate.
- Before preparing an estimate, a shop must (i) disclose to the customer the amount, if any, of the charge for doing the estimate or the basis on which the charge will be calculated and (ii) obtain authorization on the written estimate to prepare the estimate. The charge for an estimate cannot be excessive in relation to the work performed. The shop cannot require the customer to waive his or her rights under this Act as a prerequisite for repairing the vehicle.
- The shop must promptly notify the customer of additional repair work and its cost if (i) the initial estimate was only for the diagnostic work and that work has been completed, (ii) the actual charges for repair work will exceed the estimate by more than 10%, or (iii) the diagnostic work has been completed on a vehicle that was dropped off at the shop during off hours or by someone other than the owner (implied partial waiver). Once notified, the customer can authorize, modify, or cancel the repair. If a customer cancels an authorized repair after it has begun because the repair cost will exceed the estimate, the shop must re-assemble the vehicle and may charge for the tear-down and the reassembly if the customer has been notified of these possible costs from the beginning.
- A shop cannot charge more than 10% over its estimate for repairs unless the customer has consented, nor can it keep the owner's vehicle (under a possessory lien) when the final cost is more than 10% over the estimate and the customer pays the amount of the estimate plus ten percent.
- The shop must give the customer an invoice of the completed repair work, including an itemized list of parts, labor, and merchandise supplied and the costs thereof, and the use of replacement parts.
- The shop must conspicuously post a sign that discloses the customer's right to receive or waive a written estimate if the repair cost is over $100, the toll-free number at the Division of Motor Vehicles for consumer information, and the customer's right to the return or inspection of parts that have been replaced. (The right to the return of parts does not apply if the shop has a warranty arrangement or exchange parts program with a manufacturer, distributor, or supplier – *see 20-354E(e)*).

- It would be unlawful under this Act for a shop, among other things, to charge for unauthorized repair, make certain misrepresentations, fraudulently alter an invoice or estimate or misuse the customer's credit card, make misleading statements, make false promises to induce a customer to get his vehicle repaired, willfully depart from accepted standards and practices, subcontract repair work without approval, etc. A person injured by a violation of this Act would be allowed to bring an action in court. The prevailing party may be entitled to the recovery of court costs and attorneys fees in addition to damages.

For purposes of this Act, a motor vehicle repair shop would include motor vehicle repair shops, motor vehicle dealers, garages, service stations, truck stops, paint and body shops, brake, muffler and transmission shops, glasswork shops, and self-employed individuals that perform this work for compensation. However, the following would be exempt:

1. Government repair shops servicing their own vehicles.
2. Persons servicing their own vehicles or for-hire vehicles that are rented for periods of 30 days or less.
3. Persons repairing vehicles used principally in agriculture and only incidentally operated on the highways
4. Persons servicing vehicles solely for vehicle auctions
5. Persons performing minor repair services. Minor repair services includes any of the services listed in G.S. 20-354B(5), including, for example, changing the oil, tires, wiper blades, battery, etc.
6. Shops repairing commercial construction equipment.

This act would take effect when it becomes law.

This summary contributed to by Linwood Jones, Committee Counsel for Senate Commerce.

S830-SMRH-001

VISITOR REGISTRATION SHEET DATE 18 May 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Sappie	NCDOT
Andy Romanet	N.C.L.M.
Scott Mayhew	AP
Lynn Bonner	N40
Jim Penny	AAA
Reg Leister	Independent Sausage Owners Inc
Bob Carter	Coastal Beachbees

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Thursday, May 20, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 761 UPDATE CORPORATE CONVEYANCES. SENATOR WELLONS

SB 773 CLARIFY ANNEXATION REMAND. SENATOR CLODFELTER

SB 789 CHARITABLE NONPROFIT NOTICE. SENATOR SOLES

SB 908 REVISE UCC WAREHOUSE RECEIPTS. SENATOR ALBERTSON

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, MAY 20, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and Kathy Nida of Warren County was introduced as the Page assisting the committee.

The bills on the agenda were SB 761, sponsored by Senator Wellons, SB 773, sponsored by Senator Clodfelter, Senate Bill 789, sponsored by Senator Sole, and SB 908, sponsored by Senator Albertson.

SB 761 and SB 789 were postponed per request of the bill sponsors.

Senator Clodfelter was recognized for questions and comments from the Committee in regard to **Senate Bill 773, (Short title: Clarify Annexation Remand).** Rep. Russell made a motion for a favorable report for Senate Bill 773. The Committee gave SB 773 a favorable report.

In the absence of the bill sponsor, the Chair recognized Staff Counsel, Steve Rose, to give an explanation of **Senate Bill 761(Short title: Update Corporate Conveyances).** The Committee would not vote on the bill today, but the committee and others would be given an opportunity to speak on the bill. Rep. Sherrill requested that the Committee be given an opportunity to discuss SB 761 as she had received telephone calls from her constituents.

There being no further business before the Committee, the meeting was adjourned by motion of Rep. Michaux.

Members Present:

Rep. Braswell	Rep. Michaux	Rep. Hensley
Rep. Jarrell	Rep. Cansler	Rep. Capps
Rep. Barefoot	Rep. Kiser	

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 761
Judiciary I Committee Substitute Adopted 4/22/99

Short Title: Update Corporate Conveyancing. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

"**§ 47-41.01. Corporate conveyances.**

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer signing the name of such corporation by him as such officer,~~ an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e) is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier,~~ an attesting official of the corporation, the following form of acknowledgment is sufficient:

.....

(State and county, or other
description of place where

acknowledgment is taken)

I,....., ...,
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before
~~(Name of secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Name of attesting official)

me this day and acknowledged that he (or she) is .....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

of....., a corporation, and that by authority duly
(Name of corporation)

given and as the act of the corporation, the foregoing instrument was signed in its name by its.....,
~~(Chairman, president, chief executive officer, vice-president, assistant vice-president, treasurer, or chief financial officer)~~ (Title of official)

sealed with its corporate seal, and attested by himself (or herself) as its.....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

Witness my hand and official seal, this the..... day of
.....,
(Month)
.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

- (c) If the deed or other instrument is executed by an official of the corporation, signing the name of the corporation in his official capacity, or any other agent

authorized by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is sufficient:

(State and county, or other description of place where acknowledgment is taken)

I,..... .....
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before
(Name of official)
me this day and acknowledged that he (or she) is .....
(Title of official)

of....., a corporation, and that he/she, as

....., being authorized to do so, executed the
(Title of official)
foregoing on behalf of the corporation.

Witness my hand and official seal, this the..... day of
.....
(Month)
.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

(d) For purposes of this section:

(1) The words "a corporation" following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word "Corporation" or "Incorporated."

(2) The words "My commission expires" and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the form different from the position indicated in this subsection does not by itself invalidate the form.

(3) The ~~words~~ phrase "and official seal" and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered.

(4) The official of the corporation is the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e).

(5) The attesting official of the corporation is the corporation's secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier or assistant cashier.

(6) The phrase "sealed with its corporate seal" may be omitted if the seal of the corporation has not been affixed to the instrument being acknowledged."

Section 2. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.5. Elimination of seal.**

The seal of the signatory shall not be necessary to effect a valid conveyance of an interest in real property; provided, that this section shall not affect the requirement for affixing a seal of the officer taking an acknowledgment of the instrument."

Section 3. G.S. 1-47 reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action --

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

(1a) Upon a judgment rendered by a justice of the peace, from its date.

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on ~~a sealed~~ an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

(3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale

became absolute, or within ten years after the last payment on the same.

(4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

(5) Repealed by Session Laws 1959, c. 879, s. 2.

(6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting, within 10 years after the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

Section 4. G.S. 47-18.3 reads as rewritten:

"**§ 47-18.3. Execution of corporate instruments; authority and proof.**

(a) Notwithstanding anything to the contrary in the bylaws or articles of incorporation, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, ~~and attested or countersigned by another person who is its secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),~~ such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(e) ~~The Home Owners Loan Corporation or any~~ Any ~~corporation, the majority of whose stock is owned by the United States government,~~ corporation may convey ~~lands or other~~ an interest in real property which is transferable by ~~deed~~ instrument which is duly executed by either an officer, manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has attached thereto a signed and attested ~~resolution, under seal,~~ resolution of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The remaining sections of this act become effective when they become law and apply to instruments registered before, on, or after that date, except that they shall not apply to litigation pending on that date or to any instrument directly or indirectly involved in litigation pending on that date.

SENATE BILL 761:
Update Corporate Conveyancing

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: May 20, 1999
Version: Second Edition

Introduced by: Senator Wellons
Summary by: Steven Rose
Committee Counsel

SUMMARY: ***Senate Bill 761 would amend the laws governing the execution of corporate conveyances of interests in real property to eliminate the requirement that the signature of corporate executive officers needs to be attested to by another corporate official, eliminate the requirement that the instrument be sealed with the corporate seal, amend the ten-year statute of limitations to cover conveyance of real property which will no longer be under seal under this bill, and eliminate the necessity of recording a corporate resolution authorizing the signatories to corporate documents when the instrument is signed by specified executive officials.***

CURRENT LAW: Current law requires that a conveyance of corporate real property must be signed by an executive officer of the corporation, that the officer's signature and authority be attested to by another corporate officer, and that the instrument be sealed with the corporate seal. The current 10-year statute of limitation applies to instruments under seal, and thus includes conveyances of real property. The current law also requires for deeds of the Home Owners Loan Corporation or any corporation where the majority of the stock is owned by the US government, that a resolution of the board of directors of the corporation authorizing the corporate officers to sign deeds on behalf of the corporation be recorded.

BILL ANALYSIS: Section 1 of the bill expands the types of corporate officers that may execute corporate conveyances of real property to include those authorized by corporate resolution. This section also provides that the corporate seal does not have to be included on the instrument in order for the execution of the instrument to be valid. It makes conforming changes to the statutory forms.

Section 2 adds a new statutory section to provide that the seal of a signing party to a conveyance of an interest in real property is not necessary but only the seal of the notary public is required.

Section 3 amends the ten-year statute of limitations law to include an instrument conveying an interest in real property, since the requirement for the seal is eliminated in Section 2 of the bill and the current ten-year statute of limitation refers to instruments under seal.

Section 4 eliminates the requirement that a corporate officer's signature must be attested to in order for the execution of the instrument on behalf of the corporation to be valid. This section also permits a corporation to authorize some person other than the statutorily listed corporate officers to execute instruments on behalf of the corporation by a corporate resolution that is recorded to show the authorization. This section makes it clear that a resolution does not need to be recorded to validate the signature authority of the statutorily listed corporate officers.

EFFECTIVE DATE: Sections 1 and 4 become effective October 1, 1999. The other sections become effective when the bill becomes law and apply to instruments recorded prior to, on or after that date thereby validating the execution of instruments that might not have been valid under current law, except for those instruments subject to pending litigation.

O. Walker Reagan, Counsel to Senate Judiciary I Committee, contributed to the preparation of this summary.

S761-SMRL-001

NORTH CAROLINA
1899–1999
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SEEKING LIBERTY & JUSTICE
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Senate Bill 761 - Update Corporate Conveyancing

The North Carolina Bar Association Real Property Section submits this legislation which accomplishes two primary purposes. First, it allows execution of documents conveying property from a corporation to be signed and attested by a broader range of company officials than previously allowed. Section 47-41.01 is amended to employ the terms "official" and "attesting official" of a corporation. Both of these terms are defined and are broader than the corporate officers currently listed in Section 47-41.01. Additionally, a corporate conveyance is allowed with the signature of only one such official before a notary without attestation. Many other states allow corporate real property instruments (such as deeds) to be executed by only one corporate officer. Often companies in other states with such laws will execute North Carolina documents this way; the result is delays in closings and recordation of documents. SB 761 would eliminate these delays.

The second portion of the bill amends N.C.G.S. §39-6.5 to remove the requirement of a seal in the conveyance of an interest in real property. The requirement of the notary or other officer acknowledging a signature is not removed. Additionally, N.C.G.S. §1-47(2) is amended to bring actions upon an instrument of conveyance of an interest in real property which are not under seal within the ten-year statute of limitations. Finally, N.C.G.S. §47-18.3 is amended to cover proof of execution under the above revised law, and allows recordation of a resolution authorizing an agent of the corporation to execute deeds in that county.

The North Carolina Bar Association recommends passage of this important legislation.

27510 April 19, 1999

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 789
Judiciary I Committee Substitute Adopted 4/22/99

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. Upon written notice by the Attorney General prior to the expiration of the initial notice period to a charitable or religious corporation giving notice under this subsection, the Attorney General may require an additional 30-day period to review the proposed transaction during which time the transaction may not be finalized. The notice to the Attorney General required by this section shall include all the information that the Attorney General determines is required to allow a complete review of the transaction."

Section 2. This act becomes effective October 1, 1999, and applies to notices given on or after that date.

SENATE BILL 789:
Charitable Nonprofit Notice

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Soles
Date:	May 20, 1999	**Summary by:**	Robin S. Johnson
Version:	Second Edition - PCS S789-CSRH-001.2		Committee Counsel

SUMMARY: ***The proposed House Committee Substitute would amend the law requiring a charitable or religious nonprofit corporation to give notice to the Attorney General prior to a substantial sale of the corporation's assets to expand the notice period to 30 days, to reduce the applicable size of the transaction to a majority of the corporation's assets, to allow the Attorney General an additional 30 days to review the transaction, and to require the corporation to furnish the Attorney General all information necessary to conduct the review.***

The PCS would add a section to the bill to amend the law requiring a charitable or religious nonprofit corporation to give notice to the Attorney General before the merger of the corporation to expand the notice period to 30 days, to allow the Attorney General 30 additional days to review the transaction, and to require the corporation to furnish the Attorney General all information necessary to conduct the review.

CURRENT LAW: Current law requires a charitable or religious nonprofit corporation to give the Attorney General 20 days notice in advance of a merger of the corporation or in advance of the sale, lease, exchange or other disposition of all or substantially all of the corporation's assets if the transaction is other than in the normal course of activities of the corporation, unless the Attorney General waives the right to notice in writing. A charitable or religious nonprofit corporation is defined as a corporation that is tax exempt under Section 501(c)(3) of the Internal Revenue Code. Generally, these corporations are organized and operated exclusively for one of the following purposes: religious, charitable, scientific, testing for public safety, literacy, educational or prevention of cruelty to children or animals.

BILL ANALYSIS: The PCS would make several changes to these notice statutes.

1. It would expand the number of days prior notice of the sale or merger must be given from 20 to 30 days.
2. In the case of a sale of assets, it would lower the threshold for which the notice requirements apply from "substantially all" to "a majority " of the assets of the corporation.
3. It would allow the Attorney General to extend for an additional 30 days the time the Attorney General has to review either transaction before the transaction can be finalized.
4. It would require the corporation to provide all information required by the Attorney General to allow for a complete review of the transaction.

BACKGROUND: Assets of charitable and religious nonprofits are considered to be the property of the public and the Attorney General has a duty to protect the public's interest in these corporations by the enforcement of the charitable trust laws. In the situations covered by this bill, it is the role of the Attorney General to see that the disposal of the corporation's assets result in the public getting full value for the assets. This bill is intended to provide for the Attorney General to have adequate time and information to

conduct a complete review on behalf of the public. If the Attorney General determines that the terms of the transaction is not in the best interest of the public, the Attorney General can go to court and ask the court to enjoin the sale.

EFFECTIVE DATE: The bill would become effective October 1, 1999 apply to notices given on or after that date.

Summary substantially contributed to by O. Walker Reagan, Counsel, Senate Judiciary I Committee.

S789-SMRH-001B

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 773 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 2. G.S. 160A-38(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 3. This act is effective with respect to ordinances remanded on or after October 1, 1999.

SENATE BILL 773:
Clarify Annexation Remand

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Clodfelter
Date:	May 13, 1999	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

Senate Bill 773 clarifies the time a city has to take action after a court has remanded an appeal of an annexation ordinance.

Current law requires a city to act on a remand from the court of an appeal on an annexation ordinance within three months from receipt of the court's instructions, otherwise the annexation proceeding is deemed void.

Senate Bill 773 clarifies the time period for actions to be taken by the city after a remand by the court. It clarifies the time to be 90 days instead of three months and clarifies that the time begins to run the date of the entry of the order of the court's instruction instead of from receipt of the instructions.

The bill becomes effective October 1, 1999 and applies to ordinances remanded on or after that date.

S773-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 908

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors: Senators Albertson; Carpenter, Clodfelter, Harris, Hoyle, Kerr, Metcalf, Warren, and Weinstein.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

"**§ 25-7-209. Lien of warehouseman.**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever ~~deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods,~~ deposited, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for ~~a maximum amount specified on the receipt for charges other than those specified in~~

~~subsection (1), such as for money advanced and interest.~~ charges other than those specified in subsection (1) of this section, such as for money advanced and interest, but if a receipt is issued for the goods, such a security interest is not valid against third persons without notice unless the maximum amount thereof is conspicuously stated on the receipt. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 908:
Revise UCC Warehouse Receipts.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Albertson
Date:	May 20, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 908 would amend Section 209 of Article 7 of the Uniform Commercial Code to permit a warehouseman to have a possessory lien on goods held for charges or expenses arising from other goods even it the charges are not stated on the warehouse receipt. The bill also would allow the lien for other charges such as money advanced or interest, but this security interest would not be valid against third parties without notice.

CURRENT LAW: Current law in G.S. 25-7-209(1) requires that any lien asserted on goods held for charges or expenses in relation to other goods whenever deposited must be stated in the receipt for the goods against which the lien applies. Current law in G.S. 25-7-209(2) limits the maximum amount of a security interest in goods for other charges not covered in subdivision (1) to the maximum amount that is stated on the receipt.

A warehouseman is defined as a person engaged in the business of storing goods for hire. Generally, a bailor is the person who delivers the goods to the warehouseman and on whose behalf the goods are being held.

BILL ANALYSIS: This bill would amend G.S. 25-7-209 in two ways. It would amend G.S. 25-7-209(1) by deleting the requirement that the receipt for the goods must state that a lien is claimed for charges and expenses in relation to other goods deposited with the warehouseman in order for the lien to be effective. The effect of this change would be to give the warehouseman a lien on goods held for all money owed to the warehouseman for any goods currently or previously held. But this lien would not be valid against third parties unless stated in the receipt.

The bill also would amend G.S. 25-7-209(2) by deleting the requirement that the receipt for goods must specify that a security interest in the goods is held for other charges such as money advanced and interest, and by substituting language permitting a security interest without notice on the receipt for these other charges. However, this security interest would only be permitted against third parties where the receipt conspicuously states the maximum amount of security interest that may be claimed for these other charges. The effect of this change would be to give the warehouseman a security interest in goods held as against the bailor for money advanced or interest without so stating on the receipt, but it would require notice for the security interest to be valid as against third parties.

EFFECTIVE DATE: The bill would take effect October 1, 1999. It is not clear whether these changes apply to goods placed with a warehouseman before October 1, 1999, or just to goods placed with a warehouseman on or after October 1, 1999.

This summary substantially contributed to by O. Walker Reagan, Counsel, Senate Judiciary I Committee.

S908-SMRH-001

VISITOR REGISTRATION SHEET

DATE 20 May 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Dan Clodfelter	Senate
LE Hartsell	NC Bar Assocn
Steve Reinhardt	Ragsdale Liggett PLLC
Bill Scaggins	NC BAR ASSOC
Bernard Allen	SOS

AGENDA

HOUSE COMMITTEE ON JUDICIARY II

Tuesday, May 25, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 789 CHARITABLE NONPROFIT NOTICE. SENATOR SOLES

SB 921 AMEND RULE 55. SENATOR MILLER

SB 1012 MEDICAL MALPRACTICE PLEADINGS. SENATOR COOPER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, MAY 25, 1999
12:00 P. M.

The meeting was called to order by the Chairman, Rep. Braswell, and Raymond Thomas and Paul Shergill were introduced as the Pages assisting the committee.

The bills on the agenda were SB 789 sponsored by Senator Soles, SB 921, sponsored by Senator Miller, and SB 1012, sponsored by Senator Cooper.

SB 1012 (Short title: Medical Malpractice Pleadings) was removed from the agenda per request of the bill sponsor, Senator Cooper.

Senator Miller was recognized to explain **SB 921 (Short title: Amend Rule 55).** Refer to Exhibit A. The bill was discussed by the committee members. Robert Bernhardt of the Mecklenburg Bar spoke on the bill. Rep. Michaux moved for a favorable report of SB 921. The Committee gave the bill a favorable report.

The next bill on the agenda was **SB 789 (Short title: Charitable Nonprofit Notice).** Refer to Exhibit B. Senator Soles was not present but Senator Miller was recognized to explain the bill. There was a Proposed Committee Substitute (Exhibit C) and Rep. Michaux made a motion to bring the committee substitute before the committee. Staff was recognized to explain the committee substitute. Rep. Michaux moved for a favorable report for the Proposed Committee Substitute for SB 789 and an unfavorable report to the original bill. The motion passed the committee.

There being no further business before the committee, the meeting was adjourned.

Members Present:

Rep. Braswell	Rep. Barefoot	Rep. Cansler	Rep. Capps
Rep. Crawford	Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill	Rep. Hensley	Rep. Michaux	Rep. Dedmon

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1012
Judiciary I Committee Substitute Adopted 4/28/99

Short Title: Medical Malpractice Pleadings. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident or presiding judge of the superior court of ~~the~~ a county in which venue for the cause of action ~~arose~~ is proper may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

Section 2. This act becomes effective October 1, 1999.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 921 A BILL TO BE ENTITLED AN ACT TO ALLOW JUDGMENT BY DEFAULT TO BE ENTERED BY THE JUDGE WITHOUT A HEARING SUBJECT TO CERTAIN CONDITIONS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 921

Short Title: Amend Rule 55. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDGMENT BY DEFAULT TO BE ENTERED BY THE JUDGE WITHOUT A HEARING SUBJECT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 55(b) reads as rewritten:

"(b) Judgment. -- Judgment by default may be entered as follows:

(1) By the Clerk. -- When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if ~~he~~ the defendant has been defaulted for failure to appear and if ~~he~~ the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales."

(2) By the Judge. --

a. In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian ad litem or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, ~~he~~ that party (or, if appearing by representative, ~~his~~ the representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to take an investigation of any other matter, the judge may conduct such hearings or order such references as ~~he~~ the judge deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default.

b. A motion for judgment by default may be decided by the court without a hearing if:

1. The motion specifically provides that the court will decide the motion for judgment by default without a hearing if the party against whom judgment is sought fails to serve a written response, stating the grounds for opposing the motion, within 30 days of service of the motion; and

2. The party against whom judgment is sought fails to serve the response in accordance with this sub-subdivision."

Section 2. This act becomes effective October 1, 1999, and applies to causes of action commenced on or after that date.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 789 A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit "C"

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S789-CSRH-001.2
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 789
Judiciary I Committee Substitute Adopted 4/22/99
THIS IS A DRAFT 20-MAY-99 11:07:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors:

Referred to: Judiciary I.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE MERGER OF OR UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-11-02(b) reads as rewritten:

" (b) At least ~~20~~ 30 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized."

Section 3. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized."

Section 4. This act becomes effective October 1, 1999, and applies to notices given on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 789
Judiciary I Committee Substitute Adopted 4/22/99
Proposed House Committee Substitute S789-PCS8609-RH

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE MERGER OF OR UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-11-02(b) reads as rewritten:

"(b) At least ~~20~~ 30 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized."

Section 2. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. This notice shall include all the information the

Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized."

Section 3. This act becomes effective October 1, 1999, and applies to notices given on or after that date.

Exhibit "B"

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 789
Judiciary I Committee Substitute Adopted 4/22/99

Short Title: Charitable Nonprofit Notice. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-12-02(g) reads as rewritten:

"(g) A charitable or religious corporation shall give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges, or otherwise disposes of all, or ~~substantially all, of~~ a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. Upon written notice by the Attorney General prior to the expiration of the initial notice period to a charitable or religious corporation giving notice under this subsection, the Attorney General may require an additional 30-day period to review the proposed transaction during which time the transaction may not be finalized. The notice to the Attorney General required by this section shall include all the information that the Attorney General determines is required to allow a complete review of the transaction."

Section 2. This act becomes effective October 1, 1999, and applies to notices given on or after that date.

SENATE BILL 789:
Charitable Nonprofit Notice

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Soles
Date:	May 20, 1999	**Summary by:**	Robin S. Johnson Committee Counsel
Version:	Second Edition - PCS S789-CSRH-001.2		

SUMMARY: ***The proposed House Committee Substitute would amend the law requiring a charitable or religious nonprofit corporation to give notice to the Attorney General prior to a substantial sale of the corporation's assets to expand the notice period to 30 days, to reduce the applicable size of the transaction to a majority of the corporation's assets, to allow the Attorney General an additional 30 days to review the transaction, and to require the corporation to furnish the Attorney General all information necessary to conduct the review.***

The PCS would add a section to the bill to amend the law requiring a charitable or religious nonprofit corporation to give notice to the Attorney General before the merger of the corporation to expand the notice period to 30 days, to allow the Attorney General 30 additional days to review the transaction, and to require the corporation to furnish the Attorney General all information necessary to conduct the review.

CURRENT LAW: Current law requires a charitable or religious nonprofit corporation to give the Attorney General 20 days notice in advance of a merger of the corporation or in advance of the sale, lease, exchange or other disposition of all or substantially all of the corporation's assets if the transaction is other than in the normal course of activities of the corporation, unless the Attorney General waives the right to notice in writing. A charitable or religious nonprofit corporation is defined as a corporation that is tax exempt under Section 501(c)(3) of the Internal Revenue Code. Generally, these corporations are organized and operated exclusively for one of the following purposes: religious, charitable, scientific, testing for public safety, literacy, educational or prevention of cruelty to children or animals.

BILL ANALYSIS: The PCS would make several changes to these notice statutes.

1. It would expand the number of days prior notice of the sale or merger must be given from 20 to 30 days.
2. In the case of a sale of assets, it would lower the threshold for which the notice requirements apply from "substantially all" to "a majority " of the assets of the corporation.
3. It would allow the Attorney General to extend for an additional 30 days the time the Attorney General has to review either transaction before the transaction can be finalized.
4. It would require the corporation to provide all information required by the Attorney General to allow for a complete review of the transaction.

BACKGROUND: Assets of charitable and religious nonprofits are considered to be the property of the public and the Attorney General has a duty to protect the public's interest in these corporations by the enforcement of the charitable trust laws. In the situations covered by this bill, it is the role of the Attorney General to see that the disposal of the corporation's assets result in the public getting full value for the assets. This bill is intended to provide for the Attorney General to have adequate time and information to

conduct a complete review on behalf of the public. If the Attorney General determines that the terms of the transaction is not in the best interest of the public, the Attorney General can go to court and ask the court to enjoin the sale.

EFFECTIVE DATE: The bill would become effective October 1, 1999 apply to notices given on or after that date.

Summary substantially contributed to by O. Walker Reagan, Counsel, Senate Judiciary I Committee.

S789-SMRH-001B

VISITOR REGISTRATION SHEET

DATE 25 May 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS
Alan Hirsch	Atty Gen.
Vandanya Shah	Atty Gen.
Alan Hirsch	Poyner & Spruill
Pamela Baldt	ADC
John Bowditch	Zeb Alley P.A.
Robert Bernhardt	Brown & Bernhardt P.A.
Bill Scoggin	NC Bar Assoc.
Jim Kerr	Smith, Anderson et al
M. Hunt	NRA & Assoc.
Daniel Smith	Smith Anderson
W. H. Potter Jr.	NCDC
Sam Johnson	ally
Dirk Taylor	NCASE
Kate McMunn	NCCNP
Katherine Miller	Harry Kaplan

AGENDA

HOUSE COMMITTEE ON JUDICIARY II

Tuesday, June 1, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 761 UPDATE CORPORATE CONVEYANCING. SENATOR WELLONS

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

SB 852 DRUG TREATMENT COURT AMENDMENTS. SENATOR JORDAN

SB 908 REVISE UCC WAREHOUSE RECEIPTS. SENATOR ALBERTSON

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JUNE 1, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Thomas Greenwood, Kristin Sams, and Tricia Tate, were introduced.

The bills on the agenda were SB 761, sponsored by Senator Wellons, SB 830, sponsored by Senator Miller, SB 852,sponsored by Senator Jordan, and SB 908 sponsored by Senator Albertson.

Senator Miller had requested that SB 830 be removed from the agenda for today. The Committee honored his request.

Senator Albertson was recognized for **SB 908 (Short title: Revise UCC Warehouse Receipts).** Rep. Kiser made a motion to have the Proposed Committee Substitute for SB 908 to be brought before the committee. Senator Albertson was recognized to explain the committee substitute. Staff counsel, Robin Johnson, was also recognized to explain the committee substitute. The committee members discussed the bill and there were some questions raised. The bill was displaced on today's calendar to give staff an opportunity to do further research on the bill.

Senator Clodfelter was recognized for **SB 761 (Short title: Update Corporate Conveyancing).** Rep. Hensley presented a technical amendment. Rep. Hensley explained the amendment. The committee adopted the amendment. Bill Scoggins from the NC Bar Association spoke on the bill. Rep. Russell moved for a favorable report of the bill as amended. Staff would prepare a Proposed Committee Substitute. The committee gave the original bill an unfavorable report and a favorable report to the Proposed Committee Substitute.

SB 852 (Short title: Drug Treatment Court Amendments) was the next bill that was considered by the committee. Senator Jordan was not present and Judge Jack Cozort was recognized. Matt Osborne of the Administrative Office of Courts was recognized to speak on the bill. Two District Attorneys from Forsyth County passed out a handout from the Administrative Office of the Courts. The committee discussed the bill. There were questions from the committee members in regard to representation of the defendants in these matters, and whether their confessions were used against the defendants. Staff Counsel was directed to provide the committee with further information regarding these questions. The committee would consider this bill at another meeting.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Hensley	Rep. Jarrell
Rep. Kiser	Rep. Russell	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S908-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 908
THIS IS A DRAFT 1-JUN-99 09:03:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors:

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT A WAREHOUSE RECEIPT ISSUED IN ELECTRONIC FORM IS EFFECTIVE TO CREATE A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

§25-7-209. Lien of warehouseman.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such

charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

(5) A warehouseman's lien is effective under this section if the receipt is in written or electronic form."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 908

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors: Senators Albertson; Carpenter, Clodfelter, Harris, Hoyle, Kerr, Metcalf, Warren, and Weinstein.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

"**§ 25-7-209. Lien of warehouseman.**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever ~~deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods,~~ deposited, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for ~~a maximum amount specified on the receipt for charges other than those specified in~~

~~subsection (1), such as for money advanced and interest.~~ charges other than those specified in subsection (1) of this section, such as for money advanced and interest, but if a receipt is issued for the goods, such a security interest is not valid against third persons without notice unless the maximum amount thereof is conspicuously stated on the receipt. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 908:
Revise UCC Warehouse Receipts.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Albertson
Date:	May 20, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 908 would amend Section 209 of Article 7 of the Uniform Commercial Code to permit a warehouseman to have a possessory lien on goods held for charges or expenses arising from other goods even it the charges are not stated on the warehouse receipt. The bill also would allow the lien for other charges such as money advanced or interest, but this security interest would not be valid against third parties without notice.

CURRENT LAW: Current law in G.S. 25-7-209(1) requires that any lien asserted on goods held for charges or expenses in relation to other goods whenever deposited must be stated in the receipt for the goods against which the lien applies. Current law in G.S. 25-7-209(2) limits the maximum amount of a security interest in goods for other charges not covered in subdivision (1) to the maximum amount that is stated on the receipt.

A warehouseman is defined as a person engaged in the business of storing goods for hire. Generally, a bailor is the person who delivers the goods to the warehouseman and on whose behalf the goods are being held.

BILL ANALYSIS: This bill would amend G.S. 25-7-209 in two ways. It would amend G.S. 25-7-209(1) by deleting the requirement that the receipt for the goods must state that a lien is claimed for charges and expenses in relation to other goods deposited with the warehouseman in order for the lien to be effective. The effect of this change would be to give the warehouseman a lien on goods held for all money owed to the warehouseman for any goods currently or previously held. But this lien would not be valid against third parties unless stated in the receipt.

The bill also would amend G.S. 25-7-209(2) by deleting the requirement that the receipt for goods must specify that a security interest in the goods is held for other charges such as money advanced and interest, and by substituting language permitting a security interest without notice on the receipt for these other charges. However, this security interest would only be permitted against third parties where the receipt conspicuously states the maximum amount of security interest that may be claimed for these other charges. The effect of this change would be to give the warehouseman a security interest in goods held as against the bailor for money advanced or interest without so stating on the receipt, but it would require notice for the security interest to be valid as against third parties.

EFFECTIVE DATE: The bill would take effect October 1, 1999. It is not clear whether these changes apply to goods placed with a warehouseman before October 1, 1999, or just to goods placed with a warehouseman on or after October 1, 1999.

This summary substantially contributed to by O. Walker Reagan, Counsel, Senate Judiciary I Committee.

S908-SMRH-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☒ Committee Substitute for
S.B. 761 : A BILL TO BE ENTITLED AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGEMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 761

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

S761-ARL-001

Date_____,1999

Comm. Sub. [YES]
Amends Title []
2nd Ed.

Representative

moves to amend the bill on page 1, line 16, by rewriting the underlined language to read:
"G.S. 47-18.3(e),".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 761
Judiciary I Committee Substitute Adopted 4/22/99
Proposed House Committee Substitute S761-PCS3828-RL

Short Title: Update Corporate Conveyancing. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

"**§ 47-41.01. Corporate conveyances.**

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice president or an assistant vice president, treasurer, or chief financial officer signing the name of such corporation by him as such officer,~~ an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e), is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier,~~ an attesting official of the corporation, the following form of acknowledgment is sufficient:

.....

(State and county, or other

description of place where acknowledgment is taken)

I,....., ...,
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before ~~(Name of secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~ (Name of attesting official) me this day and acknowledged that he (or she) is ..... ~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~ (Title of attesting official)

of....., a corporation, and that by authority duly
(Name of corporation)
given and as the act of the corporation, the foregoing instrument was signed in its name by its....., ~~(Chairman, president, chief executive officer, vice president, assistant vice president, treasurer, or chief financial officer)~~ (Title of official)

sealed with its corporate seal, and attested by himself (or herself) as its..... ~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~ (Title of attesting official)

Witness my hand and official seal, this the..... day of
....., (Month)
..... (Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

(c) If the deed or other instrument is executed by an official of the corporation, signing the name of the corporation in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is sufficient:

(State and county, or other description of place where acknowledgment is taken)

I,..... (Name of officer taking acknowledgment) ....., (Official title of officer taking acknowledgment)

certify that ..... personally came before me this day and acknowledged that he (or she) is ..... (Name of official) (Title of official)

of....., a corporation, and that he/she, as

....., being authorized to do so, executed the foregoing on behalf of the corporation. (Title of official)

Witness my hand and official seal, this the..... day of .....

(Month)

.....

(Year)

..... (Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires..... (Date of expiration of commission as notary public)

(d) For purposes of this section:

(1) The words "a corporation" following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word "Corporation" or "Incorporated."

(2) The words "My commission expires" and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the

form different from the position indicated in this subsection does not by itself invalidate the form.

(3) The ~~words~~ phrase "and official seal" and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered.

(4) The official of the corporation is the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e).

(5) The attesting official of the corporation is the corporation's secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier or assistant cashier.

(6) The phrase "sealed with its corporate seal" may be omitted if the seal of the corporation has not been affixed to the instrument being acknowledged."

Section 2. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.5. Elimination of seal.**

The seal of the signatory shall not be necessary to effect a valid conveyance of an interest in real property; provided, that this section shall not affect the requirement for affixing a seal of the officer taking an acknowledgment of the instrument."

Section 3. G.S. 1-47 reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action --

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

(1a) Upon a judgment rendered by a justice of the peace, from its date.

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on ~~a sealed~~ an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

(3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years

after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same.

(4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

(5) Repealed by Session Laws 1959, c. 879, s. 2.

(6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting, within 10 years after the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

Section 4. G.S. 47-18.3 reads as rewritten:

"**§ 47-18.3. Execution of corporate instruments; authority and proof.**

(a) Notwithstanding anything to the contrary in the bylaws or articles of incorporation, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, ~~and attested or countersigned by another person who is its secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),~~ such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and

that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(e) ~~The Home Owners Loan Corporation or any~~ Any ~~corporation, the majority of whose stock is owned by the United States government,~~ corporation may convey ~~lands or other~~ an interest in real property which is transferable by ~~deed~~ instrument which is duly executed by either an officer, manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has attached thereto a signed and attested ~~resolution, under seal,~~ resolution of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The remaining sections of this act become effective when they become law and apply to instruments registered before, on, or after that date, except that they shall not apply to litigation pending on that date or to any instrument directly or indirectly involved in litigation pending on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 761
Judiciary I Committee Substitute Adopted 4/22/99

Short Title: Update Corporate Conveyancing. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

"**§ 47-41.01. Corporate conveyances.**

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer signing the name of such corporation by him as such officer,~~ an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e) is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier,~~ an attesting official of the corporation, the following form of acknowledgment is sufficient:

.....

(State and county, or other
description of place where

acknowledgment is taken)

I,....., ...,
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before
~~(Name of secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Name of attesting official)

me this day and acknowledged that he (or she) is .....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

of....., a corporation, and that by authority duly
(Name of corporation)

given and as the act of the corporation, the foregoing instrument was signed in its name by its.....,
~~(Chairman, president, chief executive officer, vice-president, assistant vice-president, treasurer, or chief financial officer)~~ (Title of official)

sealed with its corporate seal, and attested by himself (or herself) as its.....
~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier)~~
(Title of attesting official)

Witness my hand and official seal, this the..... day of
....., (Month)
..... (Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

(c) If the deed or other instrument is executed by an official of the corporation, signing the name of the corporation in his official capacity, or any other agent

authorized by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is sufficient:

(State and county, or other description of place where acknowledgment is taken)

I,..... .....
(Name of officer taking acknowledgment) (Official title of officer taking acknowledgment)

certify that ..... personally came before
(Name of official)

me this day and acknowledged that he (or she) is .....
(Title of official)

of....., a corporation, and that he/she, as

....., being authorized to do so, executed the
(Title of official)

foregoing on behalf of the corporation.

Witness my hand and official seal, this the..... day of
.....
(Month)
.....
(Year)

.....
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....
(Date of expiration of commission as notary public)

(d) For purposes of this section:

(1) The words "a corporation" following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word "Corporation" or "Incorporated."

(2) The words "My commission expires" and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the form different from the position indicated in this subsection does not by itself invalidate the form.

(3) The ~~words~~ phrase "and official seal" and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered.

(4) The official of the corporation is the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e).

(5) The attesting official of the corporation is the corporation's secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier or assistant cashier.

(6) The phrase "sealed with its corporate seal" may be omitted if the seal of the corporation has not been affixed to the instrument being acknowledged."

Section 2. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.5. Elimination of seal.**

The seal of the signatory shall not be necessary to effect a valid conveyance of an interest in real property; provided, that this section shall not affect the requirement for affixing a seal of the officer taking an acknowledgment of the instrument."

Section 3. G.S. 1-47 reads as rewritten:

"**§ 1-47. Ten years.**

Within ten years an action --

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

(1a) Upon a judgment rendered by a justice of the peace, from its date.

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on ~~a sealed~~ an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

(3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale

became absolute, or within ten years after the last payment on the same.

(4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

(5) Repealed by Session Laws 1959, c. 879, s. 2.

(6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting, within 10 years after the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

Section 4. G.S. 47-18.3 reads as rewritten:

"**§ 47-18.3. Execution of corporate instruments; authority and proof.**

(a) Notwithstanding anything to the contrary in the bylaws or articles of incorporation, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, ~~and attested or countersigned by another person who is its secretary or an assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),~~ such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority.

(e) ~~The Home Owners Loan Corporation or any~~ Any ~~corporation, the majority of whose stock is owned by the United States government,~~ corporation may convey ~~lands or other~~ an interest in real property which is transferable by ~~deed~~ instrument which is duly executed by either an officer, manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has attached thereto a signed and attested ~~resolution, under seal,~~ resolution of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The remaining sections of this act become effective when they become law and apply to instruments registered before, on, or after that date, except that they shall not apply to litigation pending on that date or to any instrument directly or indirectly involved in litigation pending on that date.

SENATE BILL 761:
Update Corporate Conveyancing

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Wellons
Date:	May 20, 1999	**Summary by:**	Steven Rose
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 761 would amend the laws governing the execution of corporate conveyances of interests in real property to eliminate the requirement that the signature of corporate executive officers needs to be attested to by another corporate official, eliminate the requirement that the instrument be sealed with the corporate seal, amend the ten-year statute of limitations to cover conveyance of real property which will no longer be under seal under this bill, and eliminate the necessity of recording a corporate resolution authorizing the signatories to corporate documents when the instrument is signed by specified executive officials.***

CURRENT LAW: Current law requires that a conveyance of corporate real property must be signed by an executive officer of the corporation, that the officer's signature and authority be attested to by another corporate officer, and that the instrument be sealed with the corporate seal. The current 10-year statute of limitation applies to instruments under seal, and thus includes conveyances of real property. The current law also requires for deeds of the Home Owners Loan Corporation or any corporation where the majority of the stock is owned by the US government, that a resolution of the board of directors of the corporation authorizing the corporate officers to sign deeds on behalf of the corporation be recorded.

BILL ANALYSIS: Section 1 of the bill expands the types of corporate officers that may execute corporate conveyances of real property to include those authorized by corporate resolution. This section also provides that the corporate seal does not have to be included on the instrument in order for the execution of the instrument to be valid. It makes conforming changes to the statutory forms.

Section 2 adds a new statutory section to provide that the seal of a signing party to a conveyance of an interest in real property is not necessary but only the seal of the notary public is required.

Section 3 amends the ten-year statute of limitations law to include an instrument conveying an interest in real property, since the requirement for the seal is eliminated in Section 2 of the bill and the current ten-year statute of limitation refers to instruments under seal.

Section 4 eliminates the requirement that a corporate officer's signature must be attested to in order for the execution of the instrument on behalf of the corporation to be valid. This section also permits a corporation to authorize some person other than the statutorily listed corporate officers to execute instruments on behalf of the corporation by a corporate resolution that is recorded to show the authorization. This section makes it clear that a resolution does not need to be recorded to validate the signature authority of the statutorily listed corporate officers.

EFFECTIVE DATE: Sections 1 and 4 become effective October 1, 1999. The other sections become effective when the bill becomes law and apply to instruments recorded prior to, on or after that date thereby validating the execution of instruments that might not have been valid under current law, except for those instruments subject to pending litigation.

O. Walker Reagan, Counsel to Senate Judiciary I Committee, contributed to the preparation of this summary.

S761-SMRL-001

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
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Senate Bill 761 - Update Corporate Conveyancing

The North Carolina Bar Association Real Property Section submits this legislation which accomplishes two primary purposes. First, it allows execution of documents conveying property from a corporation to be signed and attested by a broader range of company officials than previously allowed. Section 47-41.01 is amended to employ the terms "official" and "attesting official" of a corporation. Both of these terms are defined and are broader than the corporate officers currently listed in Section 47-41.01. Additionally, a corporate conveyance is allowed with the signature of only one such official before a notary without attestation. Many other states allow corporate real property instruments (such as deeds) to be executed by only one corporate officer. Often companies in other states with such laws will execute North Carolina documents this way; the result is delays in closings and recordation of documents. SB 761 would eliminate these delays.

The second portion of the bill amends N.C.G.S. §39-6.5 to remove the requirement of a seal in the conveyance of an interest in real property. The requirement of the notary or other officer acknowledging a signature is not removed. Additionally, N.C.G.S. §1-47(2) is amended to bring actions upon an instrument of conveyance of an interest in real property which are not under seal within the ten-year statute of limitations. Finally, N.C.G.S. §47-18.3 is amended to cover proof of execution under the above revised law, and allows recordation of a resolution authorizing an agent of the corporation to execute deeds in that county.

The North Carolina Bar Association recommends passage of this important legislation.

27510 April 19, 1999

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 852
Judiciary I Committee Substitute Adopted 4/27/99

Short Title: Drug Treatment Court Amendments. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

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

SENATE BILL 852:
Drug Treatment Court Amendments

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: June 1, 1999
Version: 2nd Edition

Introduced by: Senators Jordan and Ballance
Summary by: Steven Rose
Committee Counsel

SUMMARY: ***This bill allows a defendant who is eligible for the Drug Treatment Court Program to be placed on probation, if the prosecutor has deferred prosecution in the case, with court approval, so that the defendant can participate in the Drug Treatment Court Program (Article 62, Chapter 7A). The bill also adds as a special condition of probation the participation in and the successful completion of a Drug Treatment Court Program. The act becomes effective when it becomes law. (See statutes below.)***

§ 15A-1341. Probation generally.

(a) Use of Probation. - Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

(a1) Deferred Prosecution. - A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.

(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.

(4) The defendant has not previously been placed on probation and so states under oath.

(5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(b) Supervised and Unsupervised Probation. - The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Repealed by Session Laws 1995, c. 429, s. 1, effective January 1, 1997.

§ 15A-1343(b1). Special Conditions of probation.

(b1) Special Conditions. - In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

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

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and

regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3, effective December 1, 1997.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

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

H852-SMRL-001

Jo. B. McCants, Counsel to Senate Judiciary I Committee, contributed to this summary.

NORTH CAROLINA
ADMINISTRATIVE OFFICE OF THE COURTS

alternatives to court

PROGRAM
Pilot Drug Treatment Courts

DESCRIPTION
Drug treatment courts are an innovative court-based intervention wherein the judge, prosecutor, defense attorney, probation officer, community policing officer and treatment case manager (i.e., "the drug treatment court team") collaborate in a non-adversarial fashion to help ensure that chemically dependent offenders are: (1) given the appropriate resources to address their treatment needs, and (2) held rigorously accountable for their behavior while in the program. The Drug Treatment Court Program operated as a pilot program from 1995-June 30, 1998. In 1998, the General Assembly removed the pilot language (NCGS 7A-790, *et seq.)* and authorized expansion beyond the original five sites. The ongoing drug treatment court evaluation tracks participants enrolled in the programs as of January 1, 1997. Program numbers between January 1, 1997 and October 31, 1998 are shown in the table below:

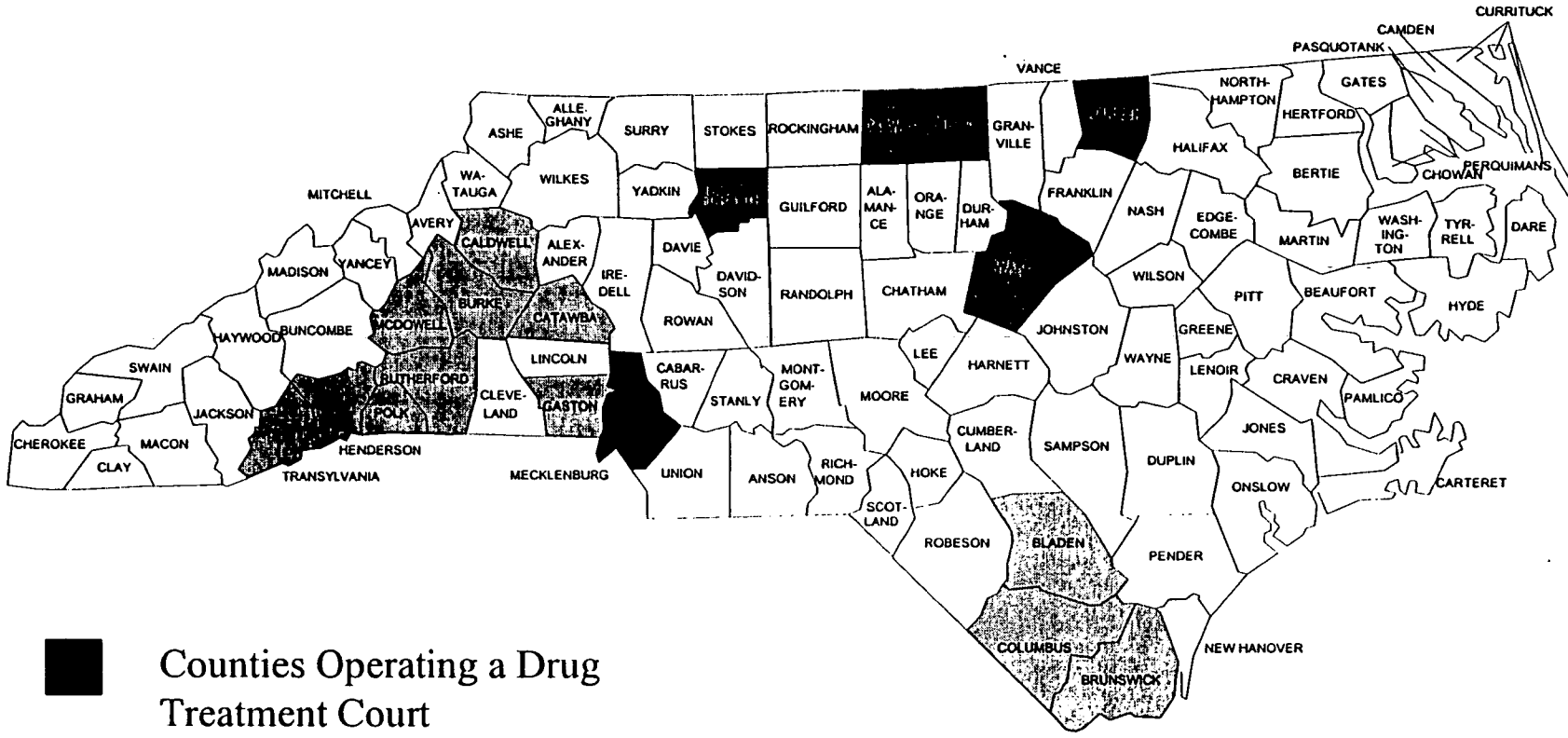
Drug Treatment Court Program	Type of Program/ Court Level	Program Implementation Date	# Admitted in 1998 (from 1/1/98 to 10/31/98)	Total # Served since 1/1/97	Retention Rate (% of participants who have graduated or remain active as of 10/31/98)*
District 9A—Person/Caswell	Pre-plea/ District Court	July 1, 1996	12	47	66%
District 10---Wake	Post-sentence/ Superior Court	May 24, 1996	39	102	44%
District 10---Wake Juvenile**	Post-adjudication/ District Court	October 30, 1998	6	6	N/A (new program)
District 21---Forsyth	Pre-plea/ District Court	June 14, 1996	28	78	47%
District 26---Mecklenburg	Pre-plea/ District Court	March 27, 1996	67	264	43%
District 26---Mecklenburg	Post-sentence/ Superior Court	July 10, 1998	33	33	N/A (new program)
District 9-----Warren	Post-sentence/ District & Superior Courts	December 5, 1996	7	23	48%

* The "Retention Rate" is calculated by adding the # of program graduates since 1/1/97 to the # of participants still active as of 10/31/98, and dividing by the total # served since 1/1/97.
** The Wake Juvenile Drug Treatment Court is funded through June 2000 by the Governor's Crime Commission.

STATUS
Pilot Period: October 1, 1995 - June 30, 1998.
Evaluation Report: Submitted to the Legislature on May 1, 1998.
Effective June 30, 1998, the General Assembly removed the pilot status and revised the enabling legislation, granting the program a more permanent stature. Legislative authorization was given to expand programs in Mecklenburg and Wake Counties and implement new programs in Durham and Vance Counties. Funds were also designated to plan for new programs in Judicial Districts 13, 25, 27A, and 29.
Next Legislative Report: Due March 1, 1999.

Administrative Office of the Courts

Drug Treatment Court Program
October 1998



Counties Operating a Drug Treatment Court

Expansion Sites

VISITOR REGISTRATION SHEET DATE JUNE 1, 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bason + crew	UNC-TV
Tom Kelly	Moore & Van Allen
Steve Reinhard	Ragsdale Liggett PLLC
LE Hartsell	NC Bar Association
Matt Osborne	AOC
Howard Redwine	N.C. Bd. of Nursing
Jack Cozort	Parker Poe Adams + Bernstein
Jardine Fayne	Governor's Office
Bill Scoggin	NC BA Assoc

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, June 8, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 852 DRUG TREATMENT COURT AMENDMENTS. SENATOR JORDAN

SB 194 NURSE LICENSURE COMPACT. SENATOR RAND

SB 414 CLOSE LOOPHOLE MIN. HOUS. STAND. SENATOR KINNAIRD

SB 527 EMERGENCY TRAFFIC ORDINANCES. SENATOR HARTSELL

SB 654 MANUFACTURED HOME LAW RESTORATION. SENATOR GULLEY

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JUNE 8, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Kim McLaurin, Kristin Livingston and Paul Mobley were introduced.

The bills on the agenda were SB 852,sponsored by Senator Jordan, SB 194, sponsored by Senator Rand, SB 414, sponsored by Senator Kinnaird, SB 527, sponsored by Senator Hartsell, and SB 654 sponsored by Senator Gulley.

Senate Bill 654 (Short title: Manufactured Home Law Restoration) was the first bill considered by the committee. Senator Gulley was recognized to explain the bill. Rep. Kiser sent forth an amendment . The committee adopted the amendment. Staff was recognized for comments. Rep. Sherrill made a motion for a favorable report of the bill as amended. The committee gave a favorable report of the amended bill and an unfavorable report to the original bill. Staff would prepare a Proposed Committee Substitute.

SB 194 (Short title: Nurse Licensure Compact) was considered by the committee. An amendment was sent forth by Rep. Barefoot. Senator Rand was recognized to explain the bill. Polly Johnson, Executive Director of the Board of Nursing, and Howard Cramer, Legal Counsel, to the Board of Nursing spoke on the bill. Rep. Capps moved that the amendment be rolled into a Committee Substitute, and given a favorable report, and an unfavorable report be given to the original bill. The Committee gave a favorable report to the Proposed Committee Substitute and an unfavorable report to the original bill.

SB 414 (Short title: Close Loophole Min. Hous. Stand) was the next bill considered by the Committee. Senator Kinnaird was recognized to explain the bill. The amendment offered by Rep. Michaux at a previous meeting had been defeated and was not being considered at this meeting. The bill analysis stated that there would be 27 counties added. Andy Romanet of the League of Municipalities was asked to speak on the bill. Due to the concerns raised by the committee members, staff was asked to gather additional information on the bill. The bill would be considered at another date.

SB 852 and SB 527 would be heard at the next meeting. In regard to SB 527 there were a number of persons from the law enforcement agencies who were present. The Chair recognized Senator Hartsell to explain the bill. There was a Proposed Committee Substitute, and Rep. Russell made a motion to place the substitute before the Committee for discussion. Staff was asked to comment on the bill. Ruth Babi, the Legislative Liaison for the Dept. of Transportation, and Chief Cansler of the Concord Police Dept., spoke on the bill. The committee would continue the discussion of this bill at a later date.

The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Jarrell	Rep. Kiser
Rep. Russell	Rep. Sherrill	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 654 A BILL TO BE ENTITLED AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. _____ DATE _____

S. B. No. 654 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Kiser
Sen.)

moves to amend the bill on page 1, line 19

( ) WHICH CHANGES THE TITLE

by inserting after the word "home" the words "and its contents".

and on page 2 line 30 by inserting after the word "home" the words "and its contents".

SIGNED Jean L. Kiser

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 654
Judiciary I Committee Substitute Adopted 4/19/99
Proposed Committee Substitute S654-PCS3831-RL

Short Title: Manufactured Home Law Restoration. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-25.9(b) reads as rewritten:

"(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e2), 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress."

Section 2. G.S. 42-25.9(g) reads as rewritten:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the ~~premises.~~ premises, except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home and its contents by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away,

dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located."

Section 3. G.S. 42-36.2(b) reads as rewritten:

"(b) Sheriff May Store Property. -- When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. ~~Within~~ Except for the disposition of manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the

tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale."

Section 4. G.S. 42-36.2(d) reads as rewritten:

"(d) Notice. -- The notice required by subsection (a) ~~shall~~ shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Section 5. G.S. 44A-2 is amended by adding a new subsection to read:

"(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21-day period, the landlord shall release possession of the personal property and manufactured home to the tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien has attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor or the lessor's agent and the tenant that the lessor shall not have a lien."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 654
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Manufactured Home Law Restoration. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-25.9(b) reads as rewritten:

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"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the ~~premises.~~ premises, except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this

Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located."

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Section 4. G.S. 42-36.2(d) reads as rewritten:

"(d) Notice. -- The notice required by subsection (a) ~~shall~~ shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

(1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;

(2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or

(3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

Section 5. G.S. 44A-2 is amended by adding a new subsection to read:

"(e2) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6) has a lien on all furniture, furnishings, and other personal property including the manufactured home titled in the name of the tenant if (i) the manufactured home remains on the demised premises 21 days after the lessor is placed in lawful possession by writ of possession and (ii) the lessor has a lawful claim for damages against the tenant. If the lessor has received a judgment for possession of the premises which has been executed, then all property remaining on the premises may be removed and placed in storage. Prior to the expiration of the 21-day period, the landlord shall release possession of the personal property and manufactured home to the tenant during regular business hours or at a time mutually agreed upon. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of the sale. The lien created by this subsection shall be enforced by public sale under G.S. 44A-4(e). The landlord may begin the advertisement for sale process immediately upon execution of the writ of possession by the sheriff, but may not conduct the sale until the lien has attached. This lien shall not have any priority over any security interest in the property that is perfected at the time the lessor acquires this lien. The lessor shall not have a lien under this subsection if there is an agreement between the lessor or the lessor's agent and the tenant that the lessor shall not have a lien."

Section 6. This act is effective when it becomes law.

SENATE BILL 654:
Manufactured Home Law Restoration

BILL ANALYSIS

Committee: House Judiciary 1I Committee
Date: May 18, 1999
Version: 2nd Edition

Introduced by: Senator Gulley
Summary by: Steven Rose
Committee Counsel

Senate Bill 654 provides that a landlord who leases manufactured home lots may not throw away, dispose of, or sell a manufactured home that remains on the landlord's lot after the landlord has been placed in lawful possession by the execution of a writ of possession. However, the landlord has a lien on the manufactured home and the personal property abandoned by the tenant. The landlord may sell the manufactured home pursuant to G.S. 44A-2(e2).

G.S. 42-25.9(g) provides that 10 days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises. Since manufactured homes and mobile homes are considered personal property, the current law would allow a landlord to throw away, dispose of, or sell a manufactured home or mobile home in the same manner as any other abandoned personal property.

Section 1. Section 1 amends G.S. 42-25.9(b) to conform it to the provisions of new G.S. 44A-2(e2) (Section 5 of the bill).

Section 2. Section 2 amends G.S. 42-25.9(g) to exempt a manufactured home from the description of personal property that a landlord may throw away, dispose of, or sell, if the home remains on the landlord's premises 10 days after receiving lawful possession by execution of a writ of possession.

Section 3. G.S. 42-36.2(b) requires a landlord to release a tenant's personal property within 10 days of a landlord being placed in lawful possession by execution of a writ of possession, and upon the tenant's request. This section amends the subsection to provide an exception for the release of the property in cases where the disposition of a manufactured home is at issue, and provides that G.S. 44A-2(e2) applies in such situations.

Section 4. G.S. 42-36.2(d) provides that before the sheriff can remove a tenant's personal property pursuant to a writ of possession of real property or an order, the sheriff must give the tenant notice of the approximate time that the writ will be executed. The notice provides that failure to request possession of any of the property on the premises within 10 days of the execution may result in the property being thrown away, disposed of, or sold. This section amends current law by providing that the sheriff does not have to give notice that the manufactured home may be thrown away, disposed of or sold in cases involving the lease of a space for a manufactured home.

Section 5. Section 5 adds a new subsection to G.S. 44A-2 that makes it clear that a landlord who leases spaces for manufactured homes acquires a lien on the actual manufactured home 21 days after being placed in lawful possession by execution of a writ of possession, if the landlord has a lawful claim against the tenant. The lessor may enforce the lien by public sale after the lien has attached. The lien does not have priority over any security interest in the property perfected at the time the lessor acquires the lien. In addition, the lessor and tenant may enter into an agreement that the lessor will not obtain a lien on the manufactured home.

Section 6. Effective Date: The act becomes effective when it becomes law.

BACKGROUND:

In 1995, the North Carolina Apartment Association, Association of Realtors and the North Carolina Justice and Community Development Center came together and requested legislation that would make it easier for landlords to dispose of personal property left in a rental unit after a final judgment of possession had been obtained. The law was subsequently changed to provide that a tenant has 10 days after execution of the judgment for possession to claim the tenant's personal property. After the 10-day period of time, the landlord had the right to dispose of the personal property. This change in the law produced an unintended effect because manufactured homes are considered personal property. Therefore, the owner of a manufactured home could lose his or her home if the owner did not move the manufactured home from the rented space within 10 days after the judgment for possession became final. Senate Bill 654 seeks to restore the law to pre-1996 to restore the law regarding the disposition of manufactured homes located on rented lots after the owners of the home have been evicted from the landlord's lot.

S654-SMRL-001

Jo B. McCants, Committee Counsel to Senate Judiciary I Committee, contributed to this summary.

SUPPORT SB 654 - "Manufactured Home Law Restoration"

Why is SB 654 needed?

In 1995 the NC Apartment Association, Association of Realtors and the NC Justice & Community Development Center agreed that a better process was needed for when a tenant who is evicted leaves personal property behind. A compromise piece of legislation (HB 899) was enacted which made it easier, simpler and quicker to dispose of personal property left in the rental premises after a final judgment for possession. The new law provided that a tenant has ten (10) days after execution of the judgment for possession to claim his/her personal property. After expiration of the ten-day period the landlord may dispose of the property. **However, one unintended effect has been for owners of manufactured homes to lose their homes if they did not move them from the rental lot within 10 days after the judgment for possession becomes final.**

What does SB 654 do?

SB 654 simply restores, clarifies and improves the pre 1996 law regarding the disposition of manufactured homes from rented lots after an eviction from the rented lot. Prior to 1996 G.S. 44A-2(e) (NC's lien law) applied to all personal property left in rental property. G.S.44A-2 (e) provided for a lien to attach to personal property left in rental property 21 days after execution of a writ of possession. It also provided for notice and sale of the property rather than allowing the landlord to simply take the manufactured home. SB 654 creates a new G.S. 44A-2(e2), which makes clear what the process is for disposing of a manufactured home after a judgment for possession of the lot becomes final. **SB 654 also streamlines the process for disposing of a manufactured home by allowing the 20 day notice of sale provision to run at the same time with the 21 days for the lien to attach. This actually shortens the pre 1996 time when the 20 day notice period ran after the lien attached.**

Under current law a manufactured home is treated as personal property. If a lot owner/landlord evicts a family from the rented lot, for whatever reason, and the manufactured home is not removed from the lot within 10 days after execution of a writ of possession, the lot owner/landlord "may throw away, dispose of or sell" the manufactured home. (See G.S. 42-25.9(g)). This is especially harsh since this is the family's home that they own or are buying. In addition it is an expensive and difficult process to move a manufactured home to another lot.

The NC Apartment Association supports SB 654.
The NC Manufactured Housing Institute supports SB 654.

For further information contact Bill Rowe, NC Justice & Community Development Center, P.O. Box 28068, Raleigh, NC 27611, (919) 856-2177 or Anne Winner P.O. Box 2833, Raleigh, NC 27602, (919) 833-3008.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 194. A BILL TO BE ENTITLED AN ACT TO CREATE THE NURSE LICENSURE COMPACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 194

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

S194-ARH-001 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative _____

moves to amend the bill on page 8, line 13, by deleting the quotation marks at the end of the line;

and on page 8, lines 13-14, by inserting between the lines the following new language:

" **§ 90-171.94. Applicability of Compact.**

This Article is applicable only to nurses whose home states are determined by the North Carolina Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of North Carolina.'".

SIGNED David W. Bamford
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 194
Proposed House Committee Substitute S194-PCSA149-RH

Short Title: Nurse Licensure Compact. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NURSE LICENSURE COMPACT.

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 9G.

"Nurse Licensure Compact.

"§ 90-171.80. Entering into Compact.

The Nurse Licensure Compact is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this Article.

"§ 90-171.81. Findings and declaration of purpose.

(a) The General Assembly of North Carolina makes the following findings:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to states' nurse licensure laws.

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

(4) New practice modalities and technology make compliance with individual states' nurse licensure laws difficult and complex.

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety.

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction.

(5) Through the mutual recognition of party state licenses, grant all party states the authority to hold nurses accountable for meeting all state practice laws in the states in which their patients are located at the time care is rendered.

"**§ 90-171.82. Definitions.**

The following definitions apply in this Article:

(1) Adverse action. -- A home or remote state action.

(2) Alternative program. -- A voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(3) Compact. -- This Article.

(4) Coordinated licensure information system. -- An integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(5) Current significant investigative information. --

a. Investigative information that indicates a licensee has committed more than a minor infraction.

b. Investigative information that indicates a licensee represents an immediate threat to public health and safety.

(6) Home state. -- The party state that is the nurse's primary state of residence.

(7) Home state action. -- Any administrative, civil, equitable, or criminal action permitted by the home state's laws that is imposed on a nurse by the home state's licensing board or another authority. The term includes the revocation, suspension, or probation of a nurse's license or any other action that affects a nurse's authorization to practice.

(8) Licensee. -- A person licensed by the North Carolina Board of Nursing or the nurse licensing board of a party state.

(9) Licensing board. -- A party state's regulatory agency that is responsible for licensing nurses.

(10) Multistate licensure privilege. -- Current official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in that state.

(11) Nurse. -- A registered nurse or licensed practical or vocational nurse as those terms are defined by each party state's practice laws.

(12) Party state. -- Any state that has adopted this Compact.

(13) Remote state. -- A party state, other than the home state, where the patient is located at the time nursing care is provided. In the case of the practice of nursing not involving a patient, the term means the party state where the recipient of nursing practice is located.

(14) Remote state action. -- Any administrative, civil, equitable, or criminal action permitted by the laws of a remote state that are imposed on a nurse by the remote state's nurse licensing board or other authority, including actions against a nurse's multistate licensure privilege to practice in the remote state. The term also includes cease and desist and other injunctive or equitable orders issued by remote states or their nurse licensing boards.

(15) State. -- A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(16) State practice laws. -- The laws and regulations of individual party states that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for disciplining nurses. The term does not include the initial qualifications for licensure or the requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

"§ 90-171.83. General provisions and jurisdiction.

(a) A license to practice registered nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in each party state. A license to practice practical or vocational nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with each state's due process laws, revoke, suspend, or limit the multistate licensure privilege of any licensee to practice in their state and may take any other actions under their applicable state laws that are necessary to protect the health and safety of their citizens. If a party state takes an action authorized in this subsection, it shall promptly notify the administrator of the

coordinated licensure information system. The administrator shall promptly notify the home state of any actions taken by remote states.

(c) Every licensee practicing in a party state shall comply with the state practice laws of the state in which the patient is located at the time care is rendered. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing in a party state shall subject a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state.

(d) The Compact does not affect additional requirements imposed by states for advanced-practice registered nursing. A multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if a license to practice registered nursing is required by state law as a precondition for qualifying for advanced-practice registered nurse authorization.

(e) Persons not residing in a party state may continue to apply for nurse licensure in party states as provided for under the laws of each party state. The license granted to such persons shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

"§ 90-171.84. Application for licensure in a party state.

(a) Upon receiving an application for a license, the licensing board in a party state shall ascertain through the coordinated licensure information system whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multistate licensure privilege, and whether any other adverse action by any state has been taken against the applicant's license.

(b) A licensee in a party state shall hold licensure in only one party state at a time. The license shall be issued by the home state.

(c) A licensee who intends to change his or her primary state of residence may apply for licensure in the new home state in advance of the change. However, a new license shall not be issued by a party state until after the licensee provides evidence of a change in his or her primary state of residence that is satisfactory to the new home state's licensing board.

(d) When a licensee changes his or her primary state of residence by moving between two party states and obtaining a license from the new home state, the license from the former home state is no longer valid.

(e) When a licensee changes his or her primary state of residence by moving from a nonparty state to a party state and obtaining a license from the new home state, the license issued by the nonparty state shall not be affected and shall remain in full force if the laws of the nonparty state so provide.

(f) When a licensee changes his or her primary state of residence by moving from a party state to a nonparty state, the license issued by the former home state converts to an individual state license that is valid only in the former home state. The license does not grant the multistate licensure privilege to practice in other party states.

"§ 90-171.85. Adverse actions.

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for the actions, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state may complete any pending investigation of a licensee who changes his or her primary state of residence during the course of the investigation. It may also take appropriate action against a licensee and shall promptly report the conclusion of the investigation to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any action taken against a licensee.

(c) A remote state may take adverse action that affects the multistate licensure privilege to practice within that party state. However, only the home state may take adverse action that affects a license that was issued by the home state.

(d) For purposes of taking adverse action, the licensing board of the home state shall give to conduct reported by a remote state the same priority and effect that it would if the conduct had occurred within the home state. The board shall apply its own state laws to determine the appropriate action that should be taken against the licensee.

(e) The home state may take adverse action based upon the factual findings of the remote state if each state follows its own procedures for imposing the adverse action.

(f) This Compact does not prohibit a party state from allowing a licensee to participate in an alternative program instead of taking adverse action against the licensee. If required by the party state's laws, the licensee's participation in an alternative program shall be confidential information. Party states shall require licensees who enter alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

"§ 90-171.86. Current significant investigative information.

(a) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)a., the licensing board shall, after giving the licensee notice and an opportunity to respond if required by state law, conduct a hearing and decide what adverse action, if any, should be taken against the licensee.

(b) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)b., the licensing board may take adverse action against the licensee without first providing the licensee notice or an opportunity to respond to the information. A hearing shall be promptly commenced and determined.

"§ 90-171.87. Additional authority of party state nursing licensing boards.

Notwithstanding any other powers, party state nurse licensing boards may do any of the following:

(1) If otherwise permitted by state law, recover from licensees the costs of investigating and disposing of cases that result in adverse action.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the other party state by any court of competent jurisdiction according to the practice and procedure of that court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the laws of the party state where the witnesses or evidence are located.

(3) Issue cease and desist orders to limit or revoke a licensee's authority to practice in the board's state.

(4) Adopt uniform rules and regulations that are developed by the Compact administrators as provided in G.S. 90-171.89(c).

"**§ 90-171.88. Coordinated licensure information system.**

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each licensee, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report to the coordinated licensure information system any adverse action taken against licensees, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, and any denials of applications for licensure and the reasons for the denials.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing party state.

(e) Any personally identifiable information obtained by a party state licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall be expunged from the coordinated licensure information system.

(g) The Compact administrators, acting jointly and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

"§ 90-171.89. Compact administration and interchange of information.

(a) The executive director of the nurse licensing board of each party state or the executive director's designee shall be the administrator of this Compact for that state.

(b) To facilitate the administration of this Compact, the Compact administrator of each party state shall furnish to the Compact administrators of all other party states information and documents concerning each licensee, including a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation.

(c) Compact administrators shall develop uniform rules and regulations to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states as authorized in G.S. 90-171.87(4).

"§ 90-171.90. Immunity.

A party state or the officers, employees, or agents of a party state's nurse licensing board who act in accordance with this Compact shall not be liable for any good faith act or omission committed while they were engaged in the performance of their duties under this Compact.

"§ 90-171.91. Effective date, withdrawal, and amendment.

(a) This Compact shall become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the Compact, but the withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the Compact administrators of all other party states.

(b) No withdrawal shall affect the validity or applicability of any report of adverse action taken by the licensing board of a state that remains a party to the Compact if the adverse action occurred prior to the withdrawal.

(c) This Compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

"§ 90-171.92. Dispute resolution.

If there is a dispute that cannot be resolved by the party states involved, the following procedure shall be used:

(1) The party states shall submit the issues in dispute to an arbitration panel that shall consist of an individual appointed by the Compact administrator in the home state, an individual appointed by the Compact administrator in the remote states involved, and an individual appointed by the Compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

"**§ 90-171.93. Construction and severability.**

This Compact shall be liberally construed so as to effectuate the purposes as stated in G.S. 90-171.81(b). The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

"**§ 90-171.94. Applicability of compact.**

This Article is applicable only to nurses whose home states are determined by the North Carolina Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of North Carolina."

Section 2. Any nurse whose license has been restricted by the North Carolina Board of Nursing on the date this act becomes effective shall not practice in any other party state as defined in G.S. 90-171.82(12), as enacted in Section 1 of this act, during the time in which the license is restricted unless the nurse receives prior authorization from such other party state.

Section 3. The North Carolina Board of Nursing shall report to the General Assembly on the implementation of the provisions of this Compact no later than March 1, 2005.

Section 4. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 194

Short Title: Nurse Licensure Compact. (Public)

Sponsors: Senators Rand; Ballance, Carrington, Carter, Clodfelter, Cooper, Dalton, East, Forrester, Garrou, Garwood, Gulley, Hagan, Harris, Horton, Hoyle, Kinnaird, Lucas, Metcalf, Odom, Perdue, Phillips, Purcell, Robinson, and Weinstein.

Referred to: Health Care.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NURSE LICENSURE COMPACT.

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 9G.

"Nurse Licensure Compact.

"**§ 90-171.80. Entering into Compact.**

The Nurse Licensure Compact is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this Article.

"**§ 90-171.81. Findings and declaration of purpose.**

(a) The General Assembly of North Carolina makes the following findings:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to states' nurse licensure laws.

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care

delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

(4) New practice modalities and technology make compliance with individual states' nurse licensure laws difficult and complex.

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety.

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction.

(5) Through the mutual recognition of party state licenses, grant all party states the authority to hold nurses accountable for meeting all state practice laws in the states in which their patients are located at the time care is rendered.

"**§ 90-171.82. Definitions.**

The following definitions apply in this Article:

(1) Adverse action. -- A home or remote state action.

(2) Alternative program. -- A voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(3) Compact. -- This Article.

(4) Coordinated licensure information system. -- An integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(5) Current significant investigative information. --

a. Investigative information that indicates a licensee has committed more than a minor infraction.

b. Investigative information that indicates a licensee represents an immediate threat to public health and safety.

(6) Home state. -- The party state that is the nurse's primary state of residence.

(7) Home state action. -- Any administrative, civil, equitable, or criminal action permitted by the home state's laws that is imposed on a nurse by the home state's licensing board or another authority. The term includes the revocation, suspension, or probation of a nurse's license or any other action that affects a nurse's authorization to practice.

(8) Licensee. -- A person licensed by the North Carolina Board of Nursing or the nurse licensing board of a party state.

(9) Licensing board. -- A party state's regulatory agency that is responsible for licensing nurses.

(10) Multistate licensure privilege. -- Current official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in that state.

(11) Nurse. -- A registered nurse or licensed practical or vocational nurse as those terms are defined by each party state's practice laws.

(12) Party state. -- Any state that has adopted this Compact.

(13) Remote state. -- A party state, other than the home state, where the patient is located at the time nursing care is provided. In the case of the practice of nursing not involving a patient, the term means the party state where the recipient of nursing practice is located.

(14) Remote state action. -- Any administrative, civil, equitable, or criminal action permitted by the laws of a remote state that are imposed on a nurse by the remote state's nurse licensing board or other authority, including actions against a nurse's multistate licensure privilege to practice in the remote state. The term also includes cease and desist and other injunctive or equitable orders issued by remote states or their nurse licensing boards.

(15) State. -- A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(16) State practice laws. -- The laws and regulations of individual party states that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for disciplining nurses. The term does not include the initial qualifications for licensure or the requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

"**§ 90-171.83. General provisions and jurisdiction.**

(a) A license to practice registered nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in each party state. A license to practice practical or vocational nursing that is issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with each state's due process laws, revoke, suspend, or limit the multistate licensure privilege of any licensee to practice in their state and may take any other actions under their applicable state laws that are

necessary to protect the health and safety of their citizens. If a party state takes an action authorized in this subsection, it shall promptly notify the administrator of the coordinated licensure information system. The administrator shall promptly notify the home state of any actions taken by remote states.

(c) Every licensee practicing in a party state shall comply with the state practice laws of the state in which the patient is located at the time care is rendered. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing in a party state shall subject a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state.

(d) The Compact does not affect additional requirements imposed by states for advanced-practice registered nursing. A multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if a license to practice registered nursing is required by state law as a precondition for qualifying for advanced-practice registered nurse authorization.

(e) Persons not residing in a party state may continue to apply for nurse licensure in party states as provided for under the laws of each party state. The license granted to such persons shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

"**§ 90-171.84. Application for licensure in a party state.**

(a) Upon receiving an application for a license, the licensing board in a party state shall ascertain through the coordinated licensure information system whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multistate licensure privilege, and whether any other adverse action by any state has been taken against the applicant's license.

(b) A licensee in a party state shall hold licensure in only one party state at a time. The license shall be issued by the home state.

(c) A licensee who intends to change his or her primary state of residence may apply for licensure in the new home state in advance of the change. However, a new license shall not be issued by a party state until after the licensee provides evidence of a change in his or her primary state of residence that is satisfactory to the new home state's licensing board.

(d) When a licensee changes his or her primary state of residence by moving between two party states and obtaining a license from the new home state, the license from the former home state is no longer valid.

(e) When a licensee changes his or her primary state of residence by moving from a nonparty state to a party state and obtaining a license from the new home state, the license issued by the nonparty state shall not be affected and shall remain in full force if the laws of the nonparty state so provide.

(f) When a licensee changes his or her primary state of residence by moving from a party state to a nonparty state, the license issued by the former home state converts to an individual state license that is valid only in the former home state. The license does not grant the multistate licensure privilege to practice in other party states.

"**§ 90-171.85. Adverse actions.**

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for the actions, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state may complete any pending investigation of a licensee who changes his or her primary state of residence during the course of the investigation. It may also take appropriate action against a licensee and shall promptly report the conclusion of the investigation to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any action taken against a licensee.

(c) A remote state may take adverse action that affects the multistate licensure privilege to practice within that party state. However, only the home state may take adverse action that affects a license that was issued by the home state.

(d) For purposes of taking adverse action, the licensing board of the home state shall give to conduct reported by a remote state the same priority and effect that it would if the conduct had occurred within the home state. The board shall apply its own state laws to determine the appropriate action that should be taken against the licensee.

(e) The home state may take adverse action based upon the factual findings of the remote state if each state follows its own procedures for imposing the adverse action.

(f) This Compact does not prohibit a party state from allowing a licensee to participate in an alternative program instead of taking adverse action against the licensee. If required by the party state's laws, the licensee's participation in an alternative program shall be confidential information. Party states shall require licensees who enter alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

"**§ 90-171.86. Current significant investigative information.**

(a) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)a., the licensing board shall, after giving the licensee notice and an opportunity to respond if required by state law, conduct a hearing and decide what adverse action, if any, should be taken against the licensee.

(b) If a licensing board finds current significant investigative information as defined in G.S. 90-171.82(5)b., the licensing board may take adverse action against the licensee without first providing the licensee notice or an opportunity to respond to the information. A hearing shall be promptly commenced and determined.

"**§ 90-171.87. Additional authority of party state nursing licensing boards.**

Notwithstanding any other powers, party state nurse licensing boards may do any of the following:

(1) If otherwise permitted by state law, recover from licensees the costs of investigating and disposing of cases that result in adverse action.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the other party state by any court of competent jurisdiction according to the practice and procedure of that court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the laws of the party state where the witnesses or evidence are located.

(3) Issue cease and desist orders to limit or revoke a licensee's authority to practice in the board's state.

(4) Adopt uniform rules and regulations that are developed by the Compact administrators as provided in G.S. 90-171.89(c).

"**§ 90-171.88. Coordinated licensure information system.**

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each licensee, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report to the coordinated licensure information system any adverse action taken against licensees, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, and any denials of applications for licensure and the reasons for the denials.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing party state.

(e) Any personally identifiable information obtained by a party state licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall be expunged from the coordinated licensure information system.

(g) The Compact administrators, acting jointly and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

"§ 90-171.89. Compact administration and interchange of information.

(a) The executive director of the nurse licensing board of each party state or the executive director's designee shall be the administrator of this Compact for that state.

(b) To facilitate the administration of this Compact, the Compact administrator of each party state shall furnish to the Compact administrators of all other party states information and documents concerning each licensee, including a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation.

(c) Compact administrators shall develop uniform rules and regulations to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states as authorized in G.S. 90-171.87(4).

"§ 90-171.90. Immunity.

A party state or the officers, employees, or agents of a party state's nurse licensing board who act in accordance with this Compact shall not be liable for any good faith act or omission committed while they were engaged in the performance of their duties under this Compact.

"§ 90-171.91. Effective date, withdrawal, and amendment.

(a) This Compact shall become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the Compact, but the withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the Compact administrators of all other party states.

(b) No withdrawal shall affect the validity or applicability of any report of adverse action taken by the licensing board of a state that remains a party to the Compact if the adverse action occurred prior to the withdrawal.

(c) This Compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

"§ 90-171.92. Dispute resolution.

If there is a dispute that cannot be resolved by the party states involved, the following procedure shall be used:

(1) The party states shall submit the issues in dispute to an arbitration panel that shall consist of an individual appointed by the Compact administrator in the home state, an individual appointed by the Compact administrator in the remote states involved, and an individual appointed by the Compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

"**§ 90-171.93. Construction and severability.**

This Compact shall be liberally construed so as to effectuate the purposes as stated in G.S. 90-171.81(b). The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters."

Section 2. Any nurse whose license has been restricted by the North Carolina Board of Nursing on the date this act becomes effective shall not practice in any other party state as defined in G.S. 90-171.82(12), as enacted in Section 1 of this act, during the time in which the license is restricted unless the nurse receives prior authorization from such other party state.

Section 3. The North Carolina Board of Nursing shall report to the General Assembly on the implementation of the provisions of this Compact no later than March 1, 2005.

Section 4. This act becomes effective July 1, 2000.

SENATE BILL 194:
Nurse Licensure Compact.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Rand
Date:	June 8, 1999	**Summary by:**	Robin S. Johnson
Version:	First		Committee Counsel

SUMMARY: The bill would implement a multistate licensure compact for registered nurses, licensed practical nurses, and licensed vocational nurses who reside in other participating states so they can practice in North Carolina without obtaining a NC license. It also would allow nurses who reside and are licensed here to practice in other participating states without obtaining licenses from those states.

Employers would be required to verify whether an employee holds a valid license from a participating state. Nurses from non-participating states would be required to apply for NC licensure before they could practice here.

The bill would take effect July 1, 2000.

BACKGROUND: The National Council of State Boards of Nursing is proposing the interstate compact on nurse licensure to coordinate certain activities associated with nurse licensure. Under the compact, a nurse who is licensed in a party state may practice nursing in all other party states, without the necessity of obtaining a license in each state. The nurse would receive only one license, from the state where he or she resides.

The NC Board of Nursing (Board) proposes that North Carolina become a party to this compact. This would modify the current licensure process and require the Board to participate in the mutual recognition model for nursing regulation. Following are the characteristics of the mutual recognition model:

- Each participating state would set its own licensure requirements, which may be similar but could differ in details.
- States would voluntarily enter into an agreement to legally recognize the licenses issued by other participating states, regardless of differences in standards. This would allow licensees to practice in any state participating in the agreement under the license issued by their state of residence.
- A nurse would have one licensure record.
- A centralized database of licensure and discipline information would be available to assist all nursing boards in licensure and disciplinary actions.

At this time, four other states have enacted legislation authorizing participation in this compact. These states are Arkansas, Maryland, Texas, and Utah.

A few states have issued Attorney General's opinions declaring this compact to be an unconstitutional delegation of legislative authority. Texas added a provision authorizing the Governor to withdraw Texas from the compact if a participating state changes, after January 1, 1999, its licensure requirements for nurses and these requirements are "substantially lower than" the requirements in Texas.

BILL ANALYSIS: Currently, nurses must obtain a license to practice from each state where they wish to practice. A nurse who resides and is licensed in a state outside of NC must apply and pay a $150.00 fee to the Board for a license to practice here. The Board may, without examination, issue a license to an applicant from a jurisdiction whose licensure requirements are "substantially equivalent to or exceed those of" North Carolina. Generally, within a week of an application, the Board issues a temporary

license authorizing the nurse to practice here while the Board determines whether the applicant is qualified to practice nursing in the State. It may take as long as nine months for the Board to make the determination and issue the license.

The bill would allow nurses who reside in participating states to practice in NC without applying for a NC license, without paying the $150.00 fee, and without the Board making any determination as to whether the nurse is qualified to practice here.

It is, and would continue to be, a Class 1 misdemeanor for a person to practice nursing without a license or for an employer to employ unlicensed persons to practice nursing in this State. The presumptive minimum punishment, assuming no prior convictions, for a Class 1 misdemeanor is 1-45 days community punishment and a fine subject to the court's discretion.

Section 1 of Article II of the NC Constitution vests all legislative power in the General Assembly. Legislative power is "the authority to make or enact laws; that is, the authority to establish rules and regulations governing the conduct of the people, their rights, duties, and procedures, and to prescribe the consequences of certain activities." Over the years, the courts have allowed the General Assembly to delegate this power – but only when it establishes adequate standards governing the exercise of the power. The issues of what may be delegated and what constitutes adequate standards are complex and must be answered on a case-by-case basis.

Clearly, the General Assembly may delegate licensing authority to a board; however, certain minimum statutory criteria must be spelled out. In the case of out-of-State nurses who wish to practice here, they currently must come from a jurisdiction whose licensure requirements are "substantially equivalent to or exceed those of" North Carolina. By entering into the compact as currently drafted, there would be no comparable requirement that the other participating states have licensure requirements meeting the criteria.

Section-by-Section Summary:

1. **G.S. 90-171.80**-Enacts the Nurse Licensure compact.
2. **G.S. 90-171.81**-Findings and declaration of purpose.
3. **G.S. 90-171.82**-Definitions for the new Article.
4. **G.S. 90-171.83**-Provides that a license to practice registered nursing issued by a home state to a resident of that state shall be recognized by each state that is a party to the compact as a multistate licensure privilege to practice as a registered nurse in each party state. This provision addresses issues of discipline, expressly stating that each state's due process laws apply and a nurse must comply with the state practice laws in the state in which they practice. For those states that have not entered the compact, current licensing laws will apply.
5. **G.S. 90-171.84**-Outlines the procedures for application for a nursing license.
6. **G.S. 90-171.85 and 86**-Outline the procedure for handling a complaint received against a nurse.
7. **G.S. 90.171.87**-Outlines additional authorities of nursing boards party to the compact. The new authority given to the N.C. Board is the ability to issue cease and desist orders to limit or revoke a nurse's ability to practice in North Carolina.
8. **G.S. 90-171-88**-Establishes how information will be exchanged across state lines through a database accessible to each of the boards of nursing. The database is currently in place. Only those states that are part of the compact will have full access.
9. **G.S. 90-171-89**-The executive director of the board will represent the Board in the administration of the compact.

10. **G.S. 90-171-90**-Immunity will be granted to officers, employees, or agents involved in the compact who act in good faith.
11. **G.S. 90-171-91**-Method by which states may enter, withdraw from or amend the compact.
12. **G. S. 90-171-92**-Establishes provisions for dispute settlement among party states.
13. **G. S. 90-171-93**-Severability clause.

Section 3 would provide that any nurse whose license has been restricted by the Board, as of the effective date, may not practice in any other party state until the restriction has been lifted.
Section 4 would direct the NC Board to report to the General Assembly on implementation of the compact no later than March 1, 2005.

John Young, Health Policy Specialist, contributed to this analysis.
S194-SMRH-001

§ 90-171.20. Definitions.

As used in this Article, unless the context requires otherwise:

(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.

(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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 414

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision

(3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling wihin 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census."

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

SENATE BILL 414:
Close Loophole Min. Hous. Stand.

BILL ANALYSIS

Committee: House Judiciary II
Date: May 6, 1999
Version: First Edition

Introduced by: Senator Kinnaird
Summary by: Robin S. Johnson
Committee Counsel

SUMMARY: ***This bill would amend the law that sets out the procedures cities must follow when ordering the repair or demolition of substandard housing. It would add 27 counties to the list of counties in which municipalities can order the demolition of a dwelling one year after it has been abandoned. Before a municipality can exercise this authority the following must occur:***

- ***The owner of the property was provided notice and a hearing.***
- ***A hearing officer determined that the dwelling was unfit for human habitation, made written findings of fact, and issued an order that was served on the owner that ordered the owner to repair or close the dwelling,***
- ***The dwelling has been closed for one year.***
- ***The municipal governing body has determined that the owner has abandoned the intent to repair the dwelling.***
- ***The municipal governing body has found that the closed status would be inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire hazard, and threat to children and vagrants, and would attract persons intent on criminal activity.***

The bill would take effect when it becomes law.

CURRENT LAW: In general, all cities regardless of size must follow the following procedures before they can order the repair or demolition of a dwelling:

- Pass an ordinance that: (i) finds that substandard housing conditions exist; (ii) designates a public officer to deal with the situation.
- Investigate an allegation that a dwelling is unfit for human habitation.
- Issue a complaint, serve the complaint, and schedule a hearing between 10 to 30 days of the issuance of the complaint.
- Conduct a hearing before the public officer or her designee.
- Have the hearing officer render a decision and order, including findings of fact.
- If the dwelling can be repaired at reasonable cost, order the repair or demolition of the dwelling within a "time specified." If it cannot be repaired at reasonable cost, order the demolition of a dwelling within a "time specified."

If, after following the procedures outlined above, the owner fails to comply with the order to repair, a difference develops in how municipalities can proceed to demolish a dwelling. Any municipality can pass an ordinance that orders the public officer to repair or demolish the dwelling; however, the municipality cannot demolish the building until the owner is first given a "reasonable opportunity" to conform to the housing code. In addition, municipalities in counties with more than 163,000 residents can pass an ordinance ordering demolition of the building if it finds a year has gone by since the owner was ordered to

fix or vacate the dwelling, the dwelling has been closed for that year, the dwelling is in effect a public nuisance, and the owner has abandoned the intent to repair the dwelling.

BILL ANALYSIS: The bill would increase the number of municipalities that would be authorized to use the alternative method of ordering demolishment of abandoned dwellings after an order was issued to repair them. Currently, this authority extends to municipalities in counties with more than 163,000 residents according to the last federal census. The bill would extend this authority to municipalities in counties with more than 58,000 residents according to the last federal census.

According to the last federal census, the bill would extend this authority to municipalities in 27 additional counties. The next census will be done next year and is likely to result in the addition of several more counties.

S414-SMRH-001

Summary contributed to by Ed Rossi, Senate JII Committee Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

DRAFT

S

S527-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 527
THIS IS A DRAFT 6-MAY-99 10:01:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors:

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS ON CITY STREETS AND STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"§ 20-169. Powers of local authorities.

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles to preempt any traffic control devices, signs, or signals upon city streets or State highways within local government boundaries.

Signs shall be erected giving notices of ~~such~~ the special limits and ~~regulations.~~ regulations under subdivisions (1) through (4) of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 527

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices and for the preemption of any signaling devices upon city streets or state highways within local government boundaries by the emergency vehicles set forth in G.S. 20-157 on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

Signs shall be erected giving notices of ~~such~~ the special limits and regulations."

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

SENATE BILL 527:
Emergency Traffic Ordinances

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Hartsell
Date:	May 6, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition - PCS S527-CSRH-001		Committee Counsel

SUMMARY: The proposed committee substitute, which makes technical changes, would allow local authorities to adopt ordinances that allow police or fire department vehicles, ambulances, and rescue squad vehicles to preempt any traffic signaling device on a city street or State highway within their geographic boundaries.

The bill would take effect when it becomes law.

CURRENT LAW: Local authorities include counties, municipalities, and every other "territorial district with a local board or body having authority to adopt local police regulations". These entities currently have the authority to provide by ordinances for the following:

- Speed limits different from State-authorized speed limits on streets within their respective jurisdictions.
- The regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous.
- The prohibition of other than one-way traffic on certain highways.
- The use of highways by processions or assemblages.
- Speed limits for vehicles on highways in public parks.
- Speed limits on school property.

They must post signs that give notice of these special limits and regulations.

Local authorities (on highways under their jurisdiction) and the Department of Transportation (on State highways) are authorized to erect or install stop signs, stop lights, and other traffic control devices, signs, and signals.

Any local authority may ask the DOT Division Engineer to authorize the use of a device that would preempt traffic signals. The Division Engineer evaluates the device and, if approved, requires the local authority to enter into a maintenance agreement, which covers the applicable traffic signals and their control boxes.

Currently, drivers are required to yield the right-of-way to police and fire department vehicles, ambulances, vehicles used to transport human tissues and organs for transplantation, rescue squad emergency service vehicles, and vehicles operated by county fire marshals and civil preparedness coordinators. With some restrictions, these vehicles also are allowed to proceed without stopping through red lights and stop signs.

BILL ANALYSIS: The proposed committee substitute would allow local authorities to adopt ordinances that would allow the preemption of traffic signals by police and fire department vehicles, ambulances, and rescue squad emergency service vehicles. This would allow these vehicles to be equipped with a device that would send a signal to upcoming traffic signals. The device, in essence, would tell the traffic signals to turn green by the time the emergency vehicle reaches the intersection. An ordinance would apply to signaling devices on city streets and State highways within the local government's boundaries.

S527-SMRH-001

Summary contributed to by Jo McCants, Senate Judiciary I Committee Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 852
Judiciary I Committee Substitute Adopted 4/27/99

Short Title: Drug Treatment Court Amendments. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

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

SENATE BILL 852:
Drug Treatment Court Amendments

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: June 1, 1999
Version: 2nd Edition

Introduced by: Senators Jordan and Ballance
Summary by: Steven Rose
Committee Counsel

SUMMARY: ***This bill allows a defendant who is eligible for the Drug Treatment Court Program to be placed on probation, if the prosecutor has deferred prosecution in the case, with court approval, so that the defendant can participate in the Drug Treatment Court Program (Article 62, Chapter 7A). The bill also adds as a special condition of probation the participation in and the successful completion of a Drug Treatment Court Program. The act becomes effective when it becomes law. (See statutes below.)***

§ 15A-1341. Probation generally.

(a) Use of Probation. - Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

(a1) Deferred Prosecution. - A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.

(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.

(4) The defendant has not previously been placed on probation and so states under oath.

(5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(b) Supervised and Unsupervised Probation. - The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Repealed by Session Laws 1995, c. 429, s. 1, effective January 1, 1997.

§ 15A-1343(b1). Special Conditions of probation.

(b1) Special Conditions. - In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

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

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and

regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3, effective December 1, 1997.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

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

H852-SMRL-001

Jo. B. McCants, Counsel to Senate Judiciary I Committee, contributed to this summary.

NORTH CAROLINA
ADMINISTRATIVE OFFICE OF THE COURTS

alternatives to court

PROGRAM
Pilot Drug Treatment Courts

DESCRIPTION
Drug treatment courts are an innovative court-based intervention wherein the judge, prosecutor, defense attorney, probation officer, community policing officer and treatment case manager (i.e., "the drug treatment court team") collaborate in a non-adversarial fashion to help ensure that chemically dependent offenders are: (1) given the appropriate resources to address their treatment needs, and (2) held rigorously accountable for their behavior while in the program. The Drug Treatment Court Program operated as a pilot program from 1995-June 30, 1998. In 1998, the General Assembly removed the pilot language (NCGS 7A-790, *et seq.)* and authorized expansion beyond the original five sites. The ongoing drug treatment court evaluation tracks participants enrolled in the programs as of January 1, 1997. Program numbers between January 1, 1997 and October 31, 1998 are shown in the table below:

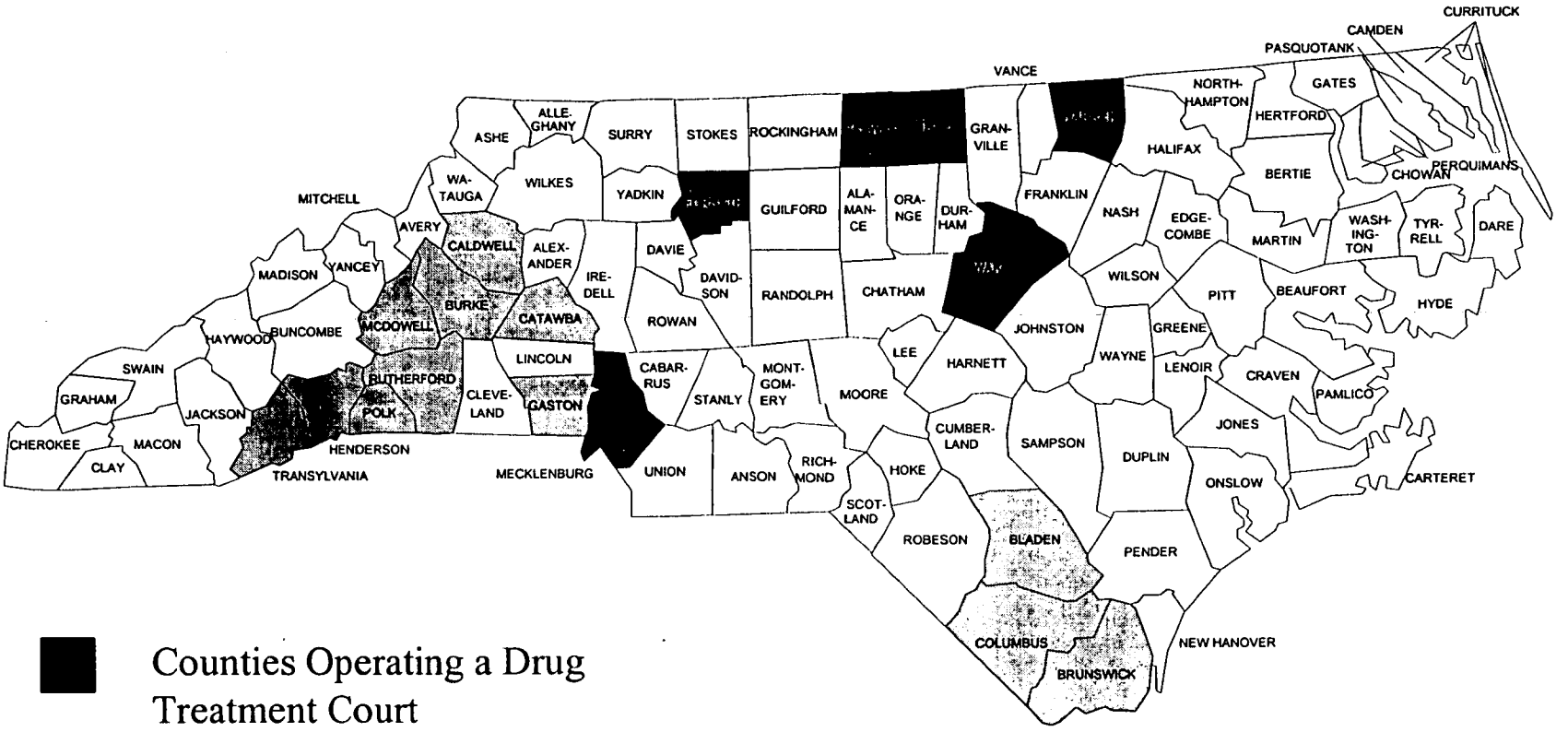
Drug Treatment Court Program	Type of Program/ Court Level	Program Implementation Date	# Admitted in 1998 (from 1/1/98 to 10/31/98)	Total # Served since 1/1/97	Retention Rate (% of participants who have graduated or remain active as of 10/31/98)*
District 9A—Person/Caswell	Pre-plea/ District Court	July 1, 1996	12	47	66%
District 10---Wake	Post-sentence/ Superior Court	May 24, 1996	39	102	44%
District 10---Wake Juvenile**	Post-adjudication/ District Court	October 30, 1998	6	6	N/A (new program)
District 21---Forsyth	Pre-plea/ District Court	June 14, 1996	28	78	47%
District 26---Mecklenburg	Pre-plea/ District Court	March 27, 1996	67	264	43%
District 26---Mecklenburg	Post-sentence/ Superior Court	July 10, 1998	33	33	N/A (new program)
District 9-----Warren	Post-sentence/ District & Superior Courts	December 5, 1996	7	23	48%

* The "Retention Rate" is calculated by adding the # of program graduates since 1/1/97 to the # of participants still active as of 10/31/98, and dividing by the total # served since 1/1/97.
** The Wake Juvenile Drug Treatment Court is funded through June 2000 by the Governor's Crime Commission.

STATUS
Pilot Period: October 1, 1995 - June 30, 1998.
Evaluation Report: Submitted to the Legislature on May 1, 1998.
Effective June 30, 1998, the General Assembly removed the pilot status and revised the enabling legislation, granting the program a more permanent stature. Legislative authorization was given to expand programs in Mecklenburg and Wake Counties and implement new programs in Durham and Vance Counties. Funds were also designated to plan for new programs in Judicial Districts 13, 25, 27A, and 29.
Next Legislative Report: Due March 1, 1999.

Administrative Office of the Courts

Drug Treatment Court Program
October 1998



Counties Operating a Drug Treatment Court

Expansion Sites

VISITOR REGISTRATION SHEET

DATE 8 June 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.A.M.
Robert Cansler	Chief of Police, Concord NC Assoc. of Chiefs of Police
Ben Murray	NC NA
Emily Connado	CJPC
Bill Hamm	AHHC
Frank Gray	N.C. Min. Housing Institute
Jim [illegible]	NCANP
Sandy Barker	NC Nurses Association
Polly Johnson	NC Board of Nursing
Howard Kreyer	N.C. Board of Nursing
Joann Schion	NC nurses Association
J. L. Huser	CARY POLICE DEPT.
Brian Smith	CARY POLICE DEPT.
Rick Blaney	Cary Police Dept.
Greg Savage	CARY POLICE DEPT.
John Moon	CARY P.D.
Jack Cozart	PPAB
Matt Osborne	AOC
Randy Morehick	AOC
Jerri Kent	Dep Atty 21st Dist
Bob Hauck	CARY POLICE CARY NC 27513
Donald Corr	CARY Police Department
Kevin Tingen	CARY POLICE DEPT.
Lt Len Hatcher	Garner Police Dept.

VISITOR REGISTRATION SHEET DATE 6-8-99

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MARK FOSL	GRANDE POLICE

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Thursday, June 10, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 527 EMERGENCY TRAFFIC ORDINANCES. SENATOR HARTSELL

SB 852 DRUG TREATMENT COURT AMENDMENTS. SENATOR JORDAN

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
THURSDAY, JUNE 10, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Amelia Robinson, Lindsay Sauls, and April Pridgen were introduced.

The bills on the agenda were SB 527, sponsored by Senator Hartsell, SB 852, sponsored by Senator Jordan, and SB 830, sponsored by Senator Miller.

The Committee continued their discussion of **SB 527 (Short title: Emergency Traffic Ordinances).** Rep. Capps withdrew an amendment (Exhibit A) that he had offered at the previous meeting. Rep. Michaux sent forth an amendment (Exhibit B) and was recognized to explain the amendment. He moved for adoption of the amendment. Rep. Sherrill also offered a substitute amendment. Danny Devone, Deputy Secretary of the Department of Transportation spoke in support of Rep. Michaux's amendment. Rep. Sherrill was recognized to debate the Michaux amendment and to explain her amendment (Exhibit C). The committee members discussed both amendments, and staff commented on each amendment. Rep. Braswell called for a vote on the Michaux amendment by a show of hands. The Michaux amendment was adopted by the Committee. Rep. Michaux moved that the Committee Substitute be rolled into a new Committee Substitute, as amended, and be given a favorable report, and an unfavorable report be given to the original Committee Substitute. The Committee gave the original Committee Substitute an unfavorable report and a favorable report to the amended Committee Substitute.

Rep. Michaux moved that the meeting be adjourned and the meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Cansler	Rep. Michaux
Rep. Capps	Rep. Jarrell	Rep. Kiser	Rep. Crawford
Rep. Hensley	Rep. Russell	Rep. Sherrill	

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 527 A BILL TO BE ENTITLED AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit "A"

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. S527-CSRH-09

H. B. No. _____ DATE _____

S. B. No. 527 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE yes

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 7

( ) WHICH CHANGES THE TITLE

by adding at the end of the line the following

"Before enactment of the ordinance authorized under this subdivision concerning any State highway the local authority shall consult with the Department of Transportation regarding the compatibility and reputation of the equipment proposed to be acquired and installed."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

Exhibit "B"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

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

S527-ARL-002 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
S527-CSRH-001

Representative Michaux

moves to amend the bill on page 2, lines 3 through 7, by rewriting those lines to read:

"(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles, equipped with a siren and a vehicle identification signal, to preempt any traffic control devices, signs, or signals upon city streets within local authority boundaries or, with the approval of the Department of Transportation, on State highways within the boundaries of local authorities. The Department of Transportation shall respond to requests for approval within 60 days of receipt of a request.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Exhibit "C"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

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

S527-ARL-001 Page 1 of __

Date _____ ,1999

Comm. Sub. [YES]
Amends Title []
S527-CSRH-001

Representative Sherrill

moves to amend the bill on page 2, line 7, by adding the following at the end of that line: "Before enactment of the ordinance authorized under this subdivision concerning any State highway, the local authority shall consult with the Department of Transportation regarding the compatibility and reputation of the equipment proposed to be acquired and installed. The Department of Transportation shall respond to any request for consultation or installation within 60 days of receipt of the request. The Department of Transportation shall be entitled to reimbursement of the actual cost of installation from the local authority.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

DRAFT

S

S527-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 527
THIS IS A DRAFT 6-MAY-99 10:01:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors:

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS ON CITY STREETS AND STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles to preempt any traffic control devices, signs, or signals upon city streets or State highways within local government boundaries.

Signs shall be erected giving notices of ~~such~~ the special limits and ~~regulations.~~ regulations under subdivisions (1) through (4) of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 527

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 25, 1999

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(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices and for the preemption of any signaling devices upon city streets or state highways within local government boundaries by the emergency vehicles set forth in G.S. 20-157 on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

Signs shall be erected giving notices of ~~such~~ the special limits and regulations."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S527-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 527
THIS IS A DRAFT 13-MAY-99 10:47:29
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors:

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

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(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles to preempt any traffic control devices, signs, or signals upon city streets or State highways within local government boundaries.

Signs shall be erected giving notices of ~~such~~ the special limits and ~~regulations.~~ regulations under subdivisions (1) through (4) of this section."

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

SENATE BILL 527:
Emergency Traffic Ordinances

BILL ANALYSIS

Committee: House Judiciary II
Date: May 6, 1999
Version: First Edition

Introduced by: Senator Hartsell
Summary by: Robin S. Johnson
Committee Counsel

SUMMARY: This bill would allow local authorities to preempt any signaling device on a city street or State highway within the boundaries of the local government when necessary to accommodate police or fire department vehicles, ambulances, and rescue squad vehicles in emergency situations.

The bill would take effect when it becomes law.

CURRENT LAW: Local authorities include counties, municipalities, and every other "territorial district with a local board or body having authority to adopt local police regulations". These entities currently have the authority to provide by ordinances for the following:

- Speed limits different from State-authorized speed limits on streets within their respective jurisdictions.
- The regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous.
- The prohibition of other than one-way traffic on certain highways.
- The use of highways by processions or assemblages.
- Speed limits for vehicles on highways in public parks.
- Speed limits on school property.

They must post signs that give notice of these special limits and regulations.

Local authorities (on highways under their jurisdiction) and the Department of Transportation (on State highways) are authorized to erect or install stop signs, stop lights, and other traffic control devices, signs, and signals.

Currently, drivers are required to yield the right-of-way to police and fire department vehicles, ambulances, vehicles used to transport human tissues and organs for transplantation, rescue squad emergency service vehicles, and vehicles operated by county fire marshals and civil preparedness coordinators. With some restrictions, these vehicles also are allowed to proceed without stopping through red lights and stop signs.

BILL ANALYSIS: The bill would allow local authorities to adopt ordinances that would allow the preemption of signal devices for police and fire department vehicles, ambulances, and rescue squad emergency service vehicles. An ordinance would apply to signaling devices on city streets and State highways within the local government's boundaries. The local authorities would be required to post signs that give notice of these special regulations.

S527-SMRH-001

Summary contributed to by Jo McCants, Senate Judiciary I Committee Counsel

Resolution In Support of Senate Bill 527

Whereas, thousands of dollars of property damage and numerous personal injuries occur annually when operators of motor vehicles fail to yield right of way to law enforcement vehicles responding to emergency conditions enter intersections against the green light with blue light and siren activated; and,

Whereas, technology exists that would allow the approaching law enforcement vehicle to cycle the traffic light in all other directions through yellow to red from up to 1,000 feet away; and,

Whereas, cities and counties lack enabling legislation to make use of this technology even at their own expense; and,

Whereas, use of this technology would contribute to public safety and reduce injuries;

NOW THEREFORE, the following members of the North Carolina Law Enforcement Association Presidents do hereby endorse and support the attached proposed legislation.

This the 27th day of May, 1999

Thomas M. Moss, Police Chief — NC Assn. of Chiefs of Police

Dennis M. Lunsford President — N.C. Police Executives Association

Robin L. Walther President — N.C. Fraternal Order of Police

Joe Jackson, Vice President — NC. Law Enf. Training Officers Assoc.

Steven C. Sumrell, Vice President — NC Narcotic Enforcement Officers Assn.

Lewis N. Lassen, President — N.C. Law Enforcement Officers Association

Wanda A. Holland — N.C. Law Enforcement Women's Assn.

Carl J Milazzo	NC Association of Police Attorne
W. Billy Smith	NC Sheriff Association

City of Spartanburg
P.O. DRAWER 1749 • SOUTH CAROLINA 29304-1749 • (864) 596-3741

TRAFFIC ENGINEERING DIVISION
PUBLIC WORKS DEPARTMENT

May 10, 1999

Robert A. Cansler, Fire Chief
City of Concord
30 Market Street, SW
Concord, N. Carolina 28026

RE: EPS II Siren Activated Preemption

Dear Chief Cansler:

The City of Spartanburg installed our first EPS II units in late 1994 and as of this date there has not been any accidents caused by the EPS II units. Also there have not been any emergency vehicle accidents at intersections where EPS II units are installed. We currently have 31 EPS II units installed in the City with 10 more units ready to be install this summer. This will give the City 41 EPS II units in operation.

Spartanburg County Fire Departments have 3 intersections on SC DOT signals in operation with approximately 7 intersections underway. This has been a joint project with the County & SC DOT.

Sincerely,

Steve Raff
Director of Traffic Engineering

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"**§ 20-354. Short title.**

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"**§ 20-354A. Scope and application.**

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons performing motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop when performing only minor repair services.

(6) Any person or motor vehicle repair shop performing repairs on commercial construction equipment.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Division' means the Division of Motor Vehicles.

(3) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(4) 'Final estimate' means the last estimate approved by the customer, either in writing or orally, as evidenced by the written repair estimate.

(5) 'Minor repair service' includes any of the following:

a. Repairing and changing tires.

b. Lubricating vehicles.

c. Cleaning, adjusting, and replacing spark plugs.

d. Changing oil and oil filters.

e. Replacing, adjusting, repairing, or servicing hoses and air filters.

f. Changing or otherwise servicing any of the following:

1. Coolant.

2. Automatic door lamp switch.

3. Battery, battery ground cable, battery hold-down strap, battery positive cable, and battery-to-starter relay cable.

4. Fan and alternator drive belts.

5. Fuses.

6. Headlamp foot dimmer.

7. Horns.

8. Ignition coil output wire.

9. Light bulbs and headlamps.

10. Ornamental accessories.

11. Power steering pump belt.

12. Wheels, except alignment.
13. Windshield washer tank.
14. Wiper blades.
15. Any other minor service which the Division has designated by rule may be performed by persons without skills and knowledge required of motor vehicle mechanics and helpers. No service shall be considered as minor if the Division finds that the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.

(6) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(7) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

(8) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed one hundred dollars ($100.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily

charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of three working days from the date of the notification.

(b) The information required by subsection (a) need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtains a written authorization to prepare an estimate if there is a charge for that estimate. No motor vehicle repair shop shall impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop.

"§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following apply, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair after being advised that a repair which he or she has authorized cannot be accomplished within the previously authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless either of the following apply:

(1) The customer waives reassembly.

(2) The reassembled vehicle would be unsafe.

After cancellation of the repair order, the shop may charge for the cost of teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the estimate prior to commencement of the diagnostic work.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate plus ten percent (10%), unless the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsection (a) of this section.

(d) It shall be unlawful for any motor vehicle repair shop to fail to return any customer's motor vehicle because the customer has refused to pay for repair charges that exceed a written estimate by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate plus the ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"§ 20-354F. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"§ 20-354G. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That if the cost of repairs will exceed one hundred dollars ($100.00) that the consumer has a right to a written estimate and may waive the right to the written estimate.
(2) The toll-free telephone number of the Division for consumer information and assistance.
(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.
(2) Misrepresent that repairs have been made to a motor vehicle.
(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.
(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.
(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
(11) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Willfully depart from or disregard accepted practices and professional standards.
(13) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee

demonstrates that the customer could not reasonably have been notified.

(14) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(15) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 852
Judiciary I Committee Substitute Adopted 4/27/99

Short Title: Drug Treatment Court Amendments. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

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

VISITOR REGISTRATION SHEET DATE 10 JUNE 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TOM MOSS	NC ASSN OF CHIEFS OF POLICE
Charles WILKINS	"
Robert Cansler	" " " " " "
Thomas F. Purser	Concord Police Dept
Walt Osborne	AOC
Connie Weaver	
[illegible]	DA 21st Dist.
Randy Monchiek	AOC
Bryan Beatty	DOJ
Phil Lehman	NC AGO
D/L [illegible]	AGO
Emily Commadas	CJPC
Jim Edwards	DMV Enf.
[illegible]	[illegible]
Len Sanderson	NC DOT
TROY PEOPLES	NC DOT
David Ferrell	HMCC&C, P.A.
Eddie Caldwell	HMCC&C, P.A.
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	AAA Carolinas
[illegible]	[illegible]
[illegible]	NCDOT
Milton Dean	NCDOT

VISITOR REGISTRATION SHEET DATE 10 June 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, June 15, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

HB 1227 BULLET PROOF VEST/COMMIT FELONY. REP. HORN

SB 1012 MEDICAL MALPRACTICE PLEADINGS. SENATOR COOPER

SB 1018 MARRIAGE LICENSES AND STUDY. SENATOR DALTON

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JUNE 15, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Sammy Gentry, Russ Ferguson, and Julie Guthrie were introduced.

The bills on the agenda were HB 1227, sponsored by Rep. Horn, SB. 1012, sponsored by Senator Cooper, and SB 1018, sponsored by Senator Dalton. HB 1227 had been discussed at a previous committee meeting. SB 1018 was referred to Judiciary III, so this committee would not consider that bill.

Senator Cooper was recognized to explain **SB 1012 (Short title: Medical Malpractice Pleadings).** Staff also commented on the bill. Rep. Russell offered an amendment to the bill (Exhibit A) and was recognized to explain the amendment. Attorney Christopher Smith of the North Carolina Medical Society spoke in support of the amendment. Rep. Russell moved for adoption of the amendment. The amendment failed. The Chairman called for the vote for SB 1012. SB 1012 was given a favorable report.

The meeting was adjourned

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Michaux	Rep. Capps
Rep. Kiser	Rep. Crawford	Rep. Hensley	Rep. Russell
Rep. Sherrill			

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 1012 A BILL TO BE ENTITLED AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate BILL 1012

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

S1012-ARE-001.2 Page 1 of 1

Date _____, 1999

Comm. Sub. [x]
Amends Title [x]
Second Edition

Representative Russell

moves to amend the bill on page 1, lines 2-3, by rewriting the lines to read:

"AN ACT TO AMEND THE LAW THAT AUTHORIZES AN EXTENSION OF THE STATUTE OF LIMITATIONS IN A MEDICAL";

and on page 2, line 7, by inserting between the words "extension." and "The" the following new sentences:

"This motion may not be heard ex parte, and must comply with Rule 5 of the Rules of Civil Procedure. Further, this motion must identify all potential defendants as to whom the complainant seeks an extension of the statute of limitations, so that the court can ensure that the extension is appropriate under this Rule.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1012
Judiciary I Committee Substitute Adopted 4/28/99

Short Title: Medical Malpractice Pleadings. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE 9 OF THE RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

"(j) Medical malpractice. -- Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident or presiding judge of the superior court of ~~the~~ a county in which venue for the cause of action ~~arose~~ is proper may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 1012:
Medical Malpractice Pleadings.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Cooper
Date:	May 25, 1999	**Summary by:**	Robin S. Johnson
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1012 would amend one of the Rules of Civil Procedure applicable to malpractice actions to permit the presiding judge in the county with venue for the case to extend the statute of limitations in order to permit the plaintiff to comply with the expert witness prefiling review requirement.***

CURRENT LAW: Current law permits a resident judge in the county where the cause of action arose in a malpractice case to grant an extension of the statute of limitations up to an additional 120 days in order to permit the plaintiff to comply with the expert witness prefiling review requirement of Rule 9(j).

BILL ANALYSIS: The bill would amend Rule 9(j) of the Rules of Civil Procedure by allowing a resident or presiding judge in a county for which there is proper venue for the case to grant an extension of the statute of limitations up to an additional 120 days. (The purpose of the extension is to allow the plaintiff additional time to comply with the requirement that a malpractice action be reviewed by a medical professional who is willing to testify that the medical care did not comply with the applicable standard of care.) This change would expand the judges authorized to extend the statute of limitations. It also would change the venue (i.e., the county where an action may be tried). Currently, medical malpractice cases must be tried in the county where the cause of action arose. The bill would expand venue to include counties where the plaintiff or defendant resides.

EFFECTIVE DATE: The bill becomes effective October 1, 1999.

This summary substantially contributed to by O. Walker Reagan, Counsel, Senate Judiciary I Committee.

S1012-SMRH-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1018

Short Title: Marriage Licenses and Study. (Public)

Sponsors: Senators Dalton; and Phillips.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING MARRIAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. 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. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 2. The Legislative Research Commission may study Chapter 51 of the General Statutes. The study may address any of the following matters:

(1) The responsibilities of the register of deeds in determining whether applicants are eligible for a marriage license.

(2) The issuance of marriage licenses to persons under 18 years of age, including situations where the female applicant is pregnant or has born a child.

(3) Persons authorized to give consent to marriage of underage applicants.

(4) Persons authorized to solemnize marriages.

(5) The duration and geographical scope of a marriage license.

(6) The penalties for solemnizing a marriage without a license or with an invalid license.

(7) Any other matters relating to marriages or marriage licenses in this State.

The Legislative Research Commission may file an interim report with the 2000 Session of the General Assembly and shall file a final report with the 2001 Session of the General Assembly.

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

SENATE BILL 1018:
Marriage Licenses and Study.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	June 1, 1999	**Summary by:**	Robin S. Johnson
Version:	First		Committee Counsel

SUMMARY: This bill would provide an alternative procedure for an applicant for a marriage license who does not have a social security number and is ineligible to obtain one. The bill also would authorize the Legislative Research Commission to study the State's marriage laws and make a final report to the 2001 General Assembly.

The act would take effect when it becomes law.

CURRENT LAW: G. S. 51-8 requires, among other things, that each applicant for a marriage license provide on the application the applicant's social security number. The register of deeds may not issue a marriage license unless all of the requirements of the statute are met.

BACKGROUND: In 1997, the General Assembly added the requirement that individuals must provide their social security numbers to receive a marriage license. Generally, United States citizens and nationals who are employed or self-employed must have social security numbers. Aliens are eligible to receive social security numbers if they are admitted to the U.S. for permanent residence, authorized to engage in employment in the U.S., or if they request one for a nonwork purpose (such as an Internal Revenue Service purpose).

The 1997 legislation (S.L. 1997-433 – Child Support Enforcement and Paternity Establishment in Conformance with Federal Welfare Reform Requirements) purported to implement the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 94-103. That federal act required state plans for administering federal TANF grant funds (Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services) to comply with it in order to continue to receive these federal funds. One of the federal act's requirements (42 USC 666(a)(13)) requires a person's social security number to be recorded on a number of documents, including an application for a marriage license.

In August, 1998, the Attorney General issued an advisory opinion that concluded that registers of deeds should issue a marriage license when they are "satisfied that the applicant is an alien who has not come to the United States for the purpose of establishing a permanent residence or for the purpose of engaging in employment, and who otherwise meets the lawful requirements for a marriage license." (See attached Advisory Opinion)

A minister or officer who marries any couple without a marriage license is subject to a $200.00 civil penalty payable to anyone who brings suit. The person is also guilty of a Class 1 misdemeanor. The presumptive minimum sentence for a Class 1 misdemeanor, assuming no prior convictions, is 1-45 days community punishment and a fine subject to the court's discretion.

CONSTITUTIONAL ISSUE: The power to regulate marriages has belonged historically to the states. In addition, the United States Supreme Court, in a 1978 decision, labeled the right to marry a fundamental right. Thus, any federal or state law or regulation that interferes with this right may be subject to strict

scrutiny by the courts. At a minimum, courts would question whether such a law or regulation interfere "directly and substantially with the right to marry." If the answer is "yes", then the law or regulatio probably will be found unconstitutional.

BILL ANALYSIS: Senate Bill 1018 would allow applicants who do not have and are not eligible for a social security number to present a sworn statement to that effect. Upon presentation of the statement, the register of deeds would be required to issue the license, provided all other requirements are met. The statement is to be retained with the register's copy of the license.

The bill also would authorize the Legislative Research Commission (LRC) to study the State's marriage laws. The study may include the responsibilities of the register of deeds, the issuance of marriage licenses to minors, persons authorized to give consent to the marriage of underage applicants, persons who may perform the marriage ceremony, the duration and geographical range of a marriage license, and penalties for performing a marriage without a valid license. The LRC would be authorized to file an interim report in the 2000 Session, and would be required to make a final report to the 2001 General Assembly.

Brenda Carter, Counsel, Senate Judiciary II Committee, contributed to the preparation of this analysis.

S1018-SMRH-001

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

MICHAEL F. EASLEY
ATTORNEY GENERAL

Reply to:
Andrew A. Vanore, Jr.
Administration
(919) 716-6400

August 14, 1998

The Honorable Katherine Lee Payne
Guilford County Register of Deeds
Guilford County Courthouse
201 South Eugene Street
Greensboro, North Carolina 27401

RE: Advisory Opinion: Marriage License; Eligibility of an Alien [1] to Obtain a Marriage License where the Alien is Prohibited by Federal Law from Obtaining a Social Security Number; Register of Deeds; N.C.G.S. § 51-8

Dear Ms. Payne:

You ask our opinion whether it would be lawful for a register of deeds to issue a marriage license to an alien who otherwise meets all of the requirements for the license but is ineligible to secure a social security number. Your question is precipitated by the language in N.C.G.S. § 51-8 (1998) which states, in pertinent part, "(e)ach applicant for a marriage license shall provide on the application the applicant's social security number."

For reasons which follow, where an alien meets all of the other requirements for a marriage license but is prohibited by federal law from receiving a social security number, a register of deeds should issue the alien a marriage license.

One must first secure a marriage license from the appropriate register of deeds to marry in North Carolina. N.C.G.S. §§ 51-6 and 51-8. The eligibility requirements for marriage are set forth in N.C.G.S. §§ 51-2 and 51-3. These requirements deal with the age of the unmarried person, when the consent of a parent is required because of the individual's age, and the kinship of those who marry.

N.C.G.S. § 51-8 addresses the license for marriage which is issued by the appropriate register of deeds. The General Assembly in 1997 amended § 51-8 mandating: "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." Session Laws 1997-433, s. 4.5; Sessions Laws 1998-17.

Social security numbers are mandated by federal law of every citizen or national of the United States who is employed or who earns income from self-employment. The individual's

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[1] "The term 'alien' means any person not a citizen or national of the United States." 8 U.S.C. § 1101 (a) (3).

name and social security number identifies the individual's record so that wages or self-employment income reported can be properly posted to the individual's record. The social security number is also used when determining entitlement to benefits. See, 42 U.S.C. §§ 405 and 408; 20 CFR §§ 422.103 and 422.107; 70A Am. Jur. 2d, Social Security and Medicare, §§ 184-205 (1987). Aliens are not eligible to receive a social security number unless admitted "for permanent residence or under other authority of law permitting them to engage in employment in the United States. . . ." 42 U.S.C. § 405 (c)(3)(B)(ii) and 20 CFR §§ 422.204 and 422.107.

The General Assembly amended § 51-8 to comply with federal law requiring stricter and more efficient means of enforcement of child support laws. See, 42 U.S.C. § 666 (a)(13)(A), which requires that the social security number of "any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application." Obviously, where a citizen or national of the United States marries, has children, and fails to lawfully provide support, if the defaulting parent is a wage earner, he or she is required to have a social security number and can be more readily located through access to the social security number.

As earlier noted, aliens may not lawfully receive a social security number unless admitted "for permanent residence or under other authority of law permitting them to engage in employment in the United States . . . ." 42 U.S.C. § 405 (c)(2)(B)(i)(I) and 20 CFR §§ 422.104 and 422.107. To read § 51-8 in such a way that would deny an alien a marriage license because he cannot provide a social security number which he may not legally obtain would make a mockery of the law. Certainly, that was not the intent of Congress or the General Assembly.

In conclusion, where the register of deeds is satisfied that the applicant is an alien who has not come to the United States for the purpose of establishing a permanent residence or for the purpose of engaging in employment, and who otherwise meets the lawful requirements for a marriage license, the register of deeds should issue the license. We suggest that the applicant provide the register of deeds with proof of citizenship of a foreign country and a sworn affidavit setting forth the necessary facts whereby the Register is satisfied that the individual would be ineligible to receive a social security number, i.e., that the applicant is a citizen of a foreign country, is not a citizen or national of the United States, and that the purpose for being in the United States is neither to establish a permanent residence nor to engage in employment, but to get married.

Should you have any questions, please feel free to contact us.

Very truly yours,

A. Vanore, Jr.

Andrew A. Vanore, Jr.
General Counsel

AAVjr/jt

cc: William Campbell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1227*

Short Title: Bullet-Proof Vest/Commit Felony. (Public)

Sponsors: Representatives Horn; Allen, Barefoot, Clary, Dedmon, Edwards, Fox, Haire, Hill, Hurley, Luebke, McCrary, McLawhorn, Redwine, Russell, Thomas, Thompson, Warren, Warwick, Womble, and Yongue.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENHANCED CRIMINAL PENALTY SHALL BE IMPOSED ON A PERSON WHO POSSESSES A BULLET-PROOF VEST WHILE COMMITTING A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant possessed a bullet-proof vest during the commission of the felony.**

(a) If a person is convicted of a felony and the court finds that the person possessed a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) This section does not apply if the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony for which the person was convicted."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1227:
Possession of Bulletproof Vest While Committing Felony

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Representative Horne
Date:	April 23, 1999	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

House Bill 1227 increases felony penalties if the defendant possessed a bulletproof vest at the time of the felony.

House Bill 1227 adds a new G.S. 15A-1340.16C to provide that, if a person is convicted of a felony and the court finds that the person possessed a bulletproof vest at the time of the felony, the person will be guilty of a felony one class higher than the underlying felony. The effect is to increase the punishment. If the evidence that the person possessed a bulletproof vest is a necessary element of proving the underlying crime for which the person was convicted, then this section will not apply.

The act is effective December 1, 1999, and applies to offenses committed on or after that date.

H1227-SMRL-001

VISITOR REGISTRATION SHEET DATE 15 JUNE 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deborah Ross	ACLU
Sonia Schmidt	NC Justice Center
David Daughtry	Child Support Enforcement - DHHS
Joann Schoen	NC Nurses Association
Alicia Gregory	Poyner & Spruill
Esther D. Evans	Electric Cities
Benjamin W. Hicks	NC asso of Registers of Deeds - alert
Ann Shaw	Randolph Co Register of Deeds
Alan Miles	Bailey & Dixon LLP
J. M. Brady	Fraternal Order of Police
John Phelps	NCLM
Barry Mills	Child Support Enforcement DHHS
Dan Forest	Office of Governor
Nelo Martinez	Office of Governor
Katie Pomeranz	DHHS
Mary Mercer	Poyner + Spruill
Steve Neal	NCMS
Amy Johnson	NCMS
Dave Hunt	Smith Anderson
Chris Smith	Smith Anderson
Katherine Miller	Hang Kaplan
Melody Rapp	
Jeb Nichols	NFOS
Hubert Tillson	NCPA

VISITOR REGISTRATION SHEET

DATE 15 June 99

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meg Fenton	Bravo - Medicaid

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, June 22 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 310 AMEND TIME FOR NOTICE OF APPEAL. SENATOR MILLER

SB 414 CLOSE LOOPHOLE MIN. HOUS. STAND. SENATOR KINNAIRD

SB 527 EMERGENCY TRAFFIC ORDINANCES. SENATOR HARTSELL

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

SB 852 DRUG TREATMENT COURT AMENDMENTS. SENATOR JORDAN

SB 1018 MARRIAGE LICENSES AND STUDY-2. SENATOR DALTON

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JUNE 22, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages were introduced.

The bills on the agenda were SB 310, sponsored by Senator Miller, SB 414, sponsored by Senator Kinnaird, SB 527, sponsored by Senator Hartsell, SB 830, sponsored by Senator Miller, SB 852, sponsored by Senator Jordan, and SB 1018 sponsored by Senator Dalton.

Senator Miller was recognized to speak on **SB 310 (Short title: Amend Time for Notice of Appeal).** Rep. Michaux made a motion for a favorable report of the Committee Substitute for SB 310. The committee substitute was given a favorable report.

Senator Dalton was recognized to speak on **SB 1018 (Short title: Marriage Licenses and Study)**. Rep. Michaux moved for a favorable report of SB 1018. The Committee gave the bill a favorable report.

Senator Kinnaird was recognized to speak on **SB 414 (Short title: Close Loophole Min. Hous. Stand).** Rep. Michaux was recognized to send forth an amendment (Refer to Exhibit A). Rep. Kinnaird was recognized to explain the amendment. The amendment was adopted. Andy Romonet was recognized to speak on the bill. The question was the threshold number of 58,000. Staff commented that there was another procedure that dealt with populations of 190,000. or more. Rep. Sherrill sent forth an amendment to change the language to any county with a population less than 190,000. The title would also need to be amended. The bill was amended on Page 1, line 12 to read as "In a municipality other than municipalities with a population in excess of 190,000" and deleting line 13 and part of line 14. The amendment was passed. Rep. Michaux made a motion that both amendments be rolled into a Proposed Committee Substitute, and that the Proposed Committee Substitute be given a favorable report and an unfavorable report given to the original bill. The Committee passed the motion.

The next bill before the committee was **Senate Bill 527 (Short title: Emergency Traffic Ordinances).** This bill had been considered at prior meeting. Senator Hartsell was recognized to speak on the bill. Rep. Michaux had two amendments that he offered to the committee. The amendments are attached hereto as Exhibit B and Exhibit C. There was also a Proposed Committee Substitute for the bill that was passed out to the committee. Rep. Michaux was recognized to explain the amendments. He moved for adoption of the amendments. Troy Peoples of the Department of Transportation spoke in support of Amendment #2. Both amendments were adopted. Rep. Michaux made a motion that the amendments be rolled into a Committee Substitute, and that the original Proposed Committee Substitute be given an unfavorable report and the new Committee Substitute,

as amended, be given a favorable report. The amended Committee Substitute was given a favorable report.

The next bill considered by the Committee was **SB 852 (Short title: Drug Treatment Court Amendments).** This bill had been discussed in a previous meeting. Senator Jordan, the bill sponsor, was not present and a representative of the Administrative Office of the Courts, Matt Osborne, spoke in regard to the bill. Tom Keith, District Attorney of Forsyth County and Randy Marchick of the Administrative Office of the Courts spoke in regard to the bill. Rep. Hensley moved for a favorable report of SB 852. The Committee gave the bill a favorable report.

The remaining bill on the agenda would be discussed at another meeting. The meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Michaux	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Hensley	Rep. Jarrell	Rep. Kiser
Rep. Russell	Rep. Sherrill		

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 310 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING, AND TO PROVIDE THAT THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATION ORDINANCES SHALL BE NINETY DAYS FROM THE ENTRY OF THE ORDER.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 310
House Committee Substitute Favorable 3/31/99
House Proposed Committee Substitute S310-HPCSRL-001
17-JUN-99 09:36:50
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Amend Time for Notice of Appeal. (Public)

Sponsors:

Referred to:

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"**§ 7B-1112. Appeals; modification of order after affirmation.**

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the

custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 2. G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order

that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 3. G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3508. Appeals.**

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 4. This act is effective October 1, 1999 and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 310
House Committee Substitute Favorable 3/31/99
Proposed House Committee Substitute S310-PCS4709-RL

Short Title: Amend Time for Notice of Appeal. (Public)

Sponsors:

Referred to:

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"**§ 7B-1112. Appeals; modification of order after affirmation.**

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to

be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 2. G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 3. G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3508. Appeals.**

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 4. This act is effective October 1, 1999, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 310
House Committee Substitute Favorable 3/31/99

Short Title: Amend Time for Notice of Appeal. (Public)

Sponsors:

Referred to:

March 10, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING, AND TO PROVIDE THAT THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATION ORDINANCES SHALL BE NINETY DAYS FROM THE ENTRY OF THE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.34 reads as rewritten:

"**§ 7A-289.34. Appeals; modification of order after affirmation.**

Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made

by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered."

Section 2. Effective July 1, 1999, G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"**§ 7B-1112. Appeals; modification of order after affirmation.**

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 3. Effective July 1, 1999, G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be

detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 4. G.S. 7A-725 reads as rewritten:

"**§ 7A-725. Appeals.**

Any petitioner, parent, or guardian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the judge may enter a temporary order affecting the custody or placement of the petitioner as he finds to be in the best interest of the petitioner or the State."

Section 5. Effective July 1, 1999, G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"**§ 7B-3508. Appeals.**

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 6. G.S. 160A-50(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the

municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 7. G.S. 160A-38(g) reads as rewritten:

"(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within ~~three months~~ 90 days ~~from receipt of such~~ following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void."

Section 8. Sections 1 and 4 of this act become effective when this act becomes law and apply to actions filed on or after that date. Sections 1 and 4 of this act expire July 1, 1999. Sections 2, 3, and 5 of this act become effective July 1, 1999, and apply to actions filed on or after that date. Sections 6 and 7 of this act become effective October 1, 1999, and apply to ordinances remanded on or after that date. The remainder of this act is effective when this act becomes law.

SENATE BILL 310:
Amend Time for Notice of Appeal in Juvenile Proceedings

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Miller
Date:	June 17, 1999	**Summary by:**	Steven Rose
Version:	Proposed Committee Substitute *S310-HPCSRL-001*		Committee Counsel

Senate Bill 310 amends the statutes governing the time when notice of appeal must be given in cases of termination of parental rights, emancipation of minors, and orders to transfer a juvenile to Superior Court. At present, the notice of appeal must be given in open court at the hearing or in writing within 10 days after the hearing. The amendments in Senate Bill 310 change the time in which written notice of appeal may be given, making it 10 days after the entry of the order, rather than 10 days after the hearing, and clarify that the entry of these orders is treated procedurally the same as entry of a judgment.

Section 1 of the bill makes the notice of appeal changes in the statute relating to the determination of parental rights, G.S. 7B-1112.

Section 2 amends G.S. 7B-2603, which governs appeals from orders transferring juvenile cases to the Superior Court.

Section 3 amends G.S. 7B-3508, governing appeals from orders of emancipation. Again, the changes are restricted to the point from which the time for written notice of appeal is measured.

The act is effective October 1, 1999 and applies to actions filed on or after that date. Thus, it only applies to the Juvenile Justice Reform Act, which becomes effective on October 1, 1999.

S310-SMRL-002

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☐ Committee Substitute for
S.B. 1018 A BILL TO BE ENTITLED AN ACT CONCERNING MARRIAGE LAWS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1018

Short Title: Marriage Licenses and Study. (Public)

Sponsors: Senators Dalton; and Phillips.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING MARRIAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. 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. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 2. The Legislative Research Commission may study Chapter 51 of the General Statutes. The study may address any of the following matters:

(1) The responsibilities of the register of deeds in determining whether applicants are eligible for a marriage license.

(2) The issuance of marriage licenses to persons under 18 years of age, including situations where the female applicant is pregnant or has born a child.

(3) Persons authorized to give consent to marriage of underage applicants.

(4) Persons authorized to solemnize marriages.

(5) The duration and geographical scope of a marriage license.

(6) The penalties for solemnizing a marriage without a license or with an invalid license.

(7) Any other matters relating to marriages or marriage licenses in this State.

The Legislative Research Commission may file an interim report with the 2000 Session of the General Assembly and shall file a final report with the 2001 Session of the General Assembly.

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

SENATE BILL 1018:
Marriage Licenses and Study.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Dalton
Date:	June 1, 1999	**Summary by:**	Robin S. Johnson
Version:	First		Committee Counsel

SUMMARY: This bill would provide an alternative procedure for an applicant for a marriage license who does not have a social security number and is ineligible to obtain one. The bill also would authorize the Legislative Research Commission to study the State's marriage laws and make a final report to the 2001 General Assembly.

The act would take effect when it becomes law.

CURRENT LAW: G. S. 51-8 requires, among other things, that each applicant for a marriage license provide on the application the applicant's social security number. The register of deeds may not issue a marriage license unless all of the requirements of the statute are met.

BACKGROUND: In 1997, the General Assembly added the requirement that individuals must provide their social security numbers to receive a marriage license. Generally, United States citizens and nationals who are employed or self-employed must have social security numbers. Aliens are eligible to receive social security numbers if they are admitted to the U.S. for permanent residence, authorized to engage in employment in the U.S., or if they request one for a nonwork purpose (such as an Internal Revenue Service purpose).

The 1997 legislation (S.L. 1997-433 – Child Support Enforcement and Paternity Establishment in Conformance with Federal Welfare Reform Requirements) purported to implement the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 94-103. That federal act required state plans for administering federal TANF grant funds (Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services) to comply with it in order to continue to receive these federal funds. One of the federal act's requirements (42 USC 666(a)(13)) requires a person's social security number to be recorded on a number of documents, including an application for a marriage license.

In August, 1998, the Attorney General issued an advisory opinion that concluded that registers of deeds should issue a marriage license when they are "satisfied that the applicant is an alien who has not come to the United States for the purpose of establishing a permanent residence or for the purpose of engaging in employment, and who otherwise meets the lawful requirements for a marriage license." (See attached Advisory Opinion)

A minister or officer who marries any couple without a marriage license is subject to a $200.00 civil penalty payable to anyone who brings suit. The person is also guilty of a Class 1 misdemeanor. The presumptive minimum sentence for a Class 1 misdemeanor, assuming no prior convictions, is 1-45 days community punishment and a fine subject to the court's discretion.

CONSTITUTIONAL ISSUE: The power to regulate marriages has belonged historically to the states. In addition, the United States Supreme Court, in a 1978 decision, labeled the right to marry a fundamental right. Thus, any federal or state law or regulation that interferes with this right may be subject to strict

scrutiny by the courts. At a minimum, courts would question whether such a law or regulation interferes "directly and substantially with the right to marry." If the answer is "yes", then the law or regulation probably will be found unconstitutional.

BILL ANALYSIS: Senate Bill 1018 would allow applicants who do not have and are not eligible for a social security number to present a sworn statement to that effect. Upon presentation of the statement, the register of deeds would be required to issue the license, provided all other requirements are met. The statement is to be retained with the register's copy of the license.

The bill also would authorize the Legislative Research Commission (LRC) to study the State's marriage laws. The study may include the responsibilities of the register of deeds, the issuance of marriage licenses to minors, persons authorized to give consent to the marriage of underage applicants, persons who may perform the marriage ceremony, the duration and geographical range of a marriage license, and penalties for performing a marriage without a valid license. The LRC would be authorized to file an interim report in the 2000 Session, and would be required to make a final report to the 2001 General Assembly.

Brenda Carter, Counsel, Senate Judiciary II Committee, contributed to the preparation of this analysis.

S1018-SMRH-001

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

MICHAEL F. EASLEY
ATTORNEY GENERAL

Reply to:
Andrew A. Vanore, Jr.
Administration
(919) 716-6400

August 14, 1998

The Honorable Katherine Lee Payne
Guilford County Register of Deeds
Guilford County Courthouse
201 South Eugene Street
Greensboro, North Carolina 27401

RE: Advisory Opinion: Marriage License; Eligibility of an Alien [1] to Obtain a Marriage License where the Alien is Prohibited by Federal Law from Obtaining a Social Security Number; Register of Deeds; N.C.G.S. § 51-8

Dear Ms. Payne:

You ask our opinion whether it would be lawful for a register of deeds to issue a marriage license to an alien who otherwise meets all of the requirements for the license but is ineligible to secure a social security number. Your question is precipitated by the language in N.C.G.S. § 51-8 (1998) which states, in pertinent part, "(e)ach applicant for a marriage license shall provide on the application the applicant's social security number."

For reasons which follow, where an alien meets all of the other requirements for a marriage license but is prohibited by federal law from receiving a social security number, a register of deeds should issue the alien a marriage license.

One must first secure a marriage license from the appropriate register of deeds to marry in North Carolina. N.C.G.S. §§ 51-6 and 51-8. The eligibility requirements for marriage are set forth in N.C.G.S. §§ 51-2 and 51-3. These requirements deal with the age of the unmarried person, when the consent of a parent is required because of the individual's age, and the kinship of those who marry.

N.C.G.S. § 51-8 addresses the license for marriage which is issued by the appropriate register of deeds. The General Assembly in 1997 amended § 51-8 mandating: "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." Session Laws 1997-433, s. 4.5; Sessions Laws 1998-17.

Social security numbers are mandated by federal law of every citizen or national of the United States who is employed or who earns income from self-employment. The individual's

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[1] "The term 'alien' means any person not a citizen or national of the United States." 8 U.S.C. § 1101 (a) (3).

name and social security number identifies the individual's record so that wages or self-employment income reported can be properly posted to the individual's record. The social security number is also used when determining entitlement to benefits. See, 42 U.S.C. §§ 405 and 408; 20 CFR §§ 422.103 and 422.107; 70A Am. Jur. 2d, Social Security and Medicare, §§ 184-205 (1987). Aliens are not eligible to receive a social security number unless admitted "for permanent residence or under other authority of law permitting them to engage in employment in the United States. . . ." 42 U.S.C. § 405 (c)(3)(B)(ii) and 20 CFR §§ 422.204 and 422.107.

The General Assembly amended § 51-8 to comply with federal law requiring stricter and more efficient means of enforcement of child support laws. See, 42 U.S.C. § 666 (a)(13)(A), which requires that the social security number of "any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application." Obviously, where a citizen or national of the United States marries, has children, and fails to lawfully provide support, if the defaulting parent is a wage earner, he or she is required to have a social security number and can be more readily located through access to the social security number.

As earlier noted, aliens may not lawfully receive a social security number unless admitted "for permanent residence or under other authority of law permitting them to engage in employment in the United States . . . ." 42 U.S.C. § 405 (c)(2)(B)(i)(I) and 20 CFR §§ 422.104 and 422.107. To read § 51-8 in such a way that would deny an alien a marriage license because he cannot provide a social security number which he may not legally obtain would make a mockery of the law. Certainly, that was not the intent of Congress or the General Assembly.

In conclusion, where the register of deeds is satisfied that the applicant is an alien who has not come to the United States for the purpose of establishing a permanent residence or for the purpose of engaging in employment, and who otherwise meets the lawful requirements for a marriage license, the register of deeds should issue the license. We suggest that the applicant provide the register of deeds with proof of citizenship of a foreign country and a sworn affidavit setting forth the necessary facts whereby the Register is satisfied that the individual would be ineligible to receive a social security number, i.e., that the applicant is a citizen of a foreign country, is not a citizen or national of the United States, and that the purpose for being in the United States is neither to establish a permanent residence nor to engage in employment, but to get married.

Should you have any questions, please feel free to contact us.

Very truly yours,

A. Vanore, Jr.

Andrew A. Vanore, Jr.
General Counsel

AAVjr/jt

cc: William Campbell

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 414 A BILL TO BE ENTITLED AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit "A"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 414

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

S414-ARH-002

Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Representative _____

moves to amend the bill on page 1, line 12, by rewriting the line to read:

"a. In ~~a municipality located in counties which have a~~ any municipality located entirely within, or partially within, any county with a".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 414

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

S414-ARH-002

Date_____,1999

Comm. Sub. []
Amends Title []

Representative Sherrill

moves to amend the bill on page 1, line 12, by rewriting the line to read:

"a. In ~~a municipality located in counties which have a~~ any municipality located entirely within, or partially within, any county with a".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 414
Proposed House Committee Substitute S414-PCS1761-RH

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES WITH POPULATIONS OF ONE HUNDRED NINETY THOUSAND PEOPLE OR LESS BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a ~~municipality located in counties which have a population in excess of 163,000 by the last federal census, other than municipalities~~ municipality, other than a municipality with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be

repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

~~This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.~~ "

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 414

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision

(3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling wihin 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census."

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

SENATE BILL 414:
Close Loophole Min. Hous. Stand.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Kinnaird
Date:	May 6, 1999	**Summary by:**	Robin S. Johnson
Version:	First Edition		Committee Counsel

SUMMARY: This bill would amend the law that sets out the procedures cities must follow when ordering the repair or demolition of substandard housing. It would add 27 counties to the list of counties in which municipalities can order the demolition of a dwelling one year after it has been abandoned. Before a municipality can exercise this authority the following must occur:

- *The owner of the property was provided notice and a hearing.*
- *A hearing officer determined that the dwelling was unfit for human habitation, made written findings of fact, and issued an order that was served on the owner that ordered the owner to repair or close the dwelling,*
- *The dwelling has been closed for one year.*
- *The municipal governing body has determined that the owner has abandoned the intent to repair the dwelling.*
- *The municipal governing body has found that the closed status would be inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire hazard, and threat to children and vagrants, and would attract persons intent on criminal activity.*

The bill would take effect when it becomes law.

CURRENT LAW: In general, all cities regardless of size must follow the following procedures before they can order the repair or demolition of a dwelling:

- Pass an ordinance that: (i) finds that substandard housing conditions exist; (ii) designates a public officer to deal with the situation.
- Investigate an allegation that a dwelling is unfit for human habitation.
- Issue a complaint, serve the complaint, and schedule a hearing between 10 to 30 days of the issuance of the complaint.
- Conduct a hearing before the public officer or her designee.
- Have the hearing officer render a decision and order, including findings of fact.
- If the dwelling can be repaired at reasonable cost, order the repair or demolition of the dwelling within a "time specified." If it cannot be repaired at reasonable cost, order the demolition of a dwelling within a "time specified."

If, after following the procedures outlined above, the owner fails to comply with the order to repair, a difference develops in how municipalities can proceed to demolish a dwelling. Any municipality can pass an ordinance that orders the public officer to repair or demolish the dwelling; however, the municipality cannot demolish the building until the owner is first given a "reasonable opportunity" to conform to the housing code. In addition, municipalities in counties with more than 163,000 residents can pass an ordinance ordering demolition of the building if it finds a year has gone by since the owner was ordered to

fix or vacate the dwelling, the dwelling has been closed for that year, the dwelling is in effect a public nuisance, and the owner has abandoned the intent to repair the dwelling.

BILL ANALYSIS: The bill would increase the number of municipalities that would be authorized to use the alternative method of ordering demolishment of abandoned dwellings after an order was issued to repair them. Currently, this authority extends to municipalities in counties with more than 163,000 residents according to the last federal census. The bill would extend this authority to municipalities in counties with more than 58,000 residents according to the last federal census.

According to the last federal census, the bill would extend this authority to municipalities in 27 additional counties. The next census will be done next year and is likely to result in the addition of several more counties.

S414-SMRH-001

Summary contributed to by Ed Rossi, Senate JII Committee Counsel

LINC Rankings Report N.C. State Data Center 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
1	MECKLENBURG COUNTY	511,481
2	WAKE COUNTY	426,301
3	GUILFORD COUNTY	347,420
4	CUMBERLAND COUNTY	274,713
5	FORSYTH COUNTY	265,878
6	DURHAM COUNTY	181,854
7	GASTON COUNTY	175,093
8	BUNCOMBE COUNTY	174,819
9	ONSLOW COUNTY	149,838
10	DAVIDSON COUNTY	126,677
11	NEW HANOVER COUNTY	120,284
12	CATAWBA COUNTY	118,412
13	ROWAN COUNTY	110,605
14	PITT COUNTY	108,480
15	ALAMANCE COUNTY	108,213
16	RANDOLPH COUNTY	106,546
17	ROBESON COUNTY	105,170
18	WAYNE COUNTY	104,666
19	CABARRUS COUNTY	98,935
20	ORANGE COUNTY	93,851
21	IREDELL COUNTY	92,935
22	ROCKINGHAM COUNTY	86,064
23	CLEVELAND COUNTY	84,713
24	UNION COUNTY	84,210
25	CRAVEN COUNTY	81,613
26	JOHNSTON COUNTY	81,306
27	NASH COUNTY	76,677
28	BURKE COUNTY	75,740
29	CALDWELL COUNTY	70,709
30	HENDERSON COUNTY	69,285
31	HARNETT COUNTY	67,833
32	WILSON COUNTY	66,061
33	SURRY COUNTY	61,704
34	WILKES COUNTY	59,393
35	MOORE COUNTY	59,000
36	LENOIR COUNTY	57,274
37	RUTHERFORD COUNTY	56,918
38	EDGECOMBE COUNTY	56,692
39	HALIFAX COUNTY	55,516
40	CARTERET COUNTY	52,553
41	STANLY COUNTY	51,765
42	BRUNSWICK COUNTY	50,985
43	LINCOLN COUNTY	50,319
44	COLUMBUS COUNTY	49,587
45	SAMPSON COUNTY	47,297
46	HAYWOOD COUNTY	46,942
47	RICHMOND COUNTY	44,518
48	BEAUFORT COUNTY	42,283

LINC Rankings Report — N.C. State Data Center — 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
49	LEE COUNTY	41,370
50	DUPLIN COUNTY	39,995
51	VANCE COUNTY	38,892
52	CHATHAM COUNTY	38,759
53	GRANVILLE COUNTY	38,341
54	STOKES COUNTY	37,223
55	WATAUGA COUNTY	36,952
56	FRANKLIN COUNTY	36,414
57	MCDOWELL COUNTY	35,681
58	SCOTLAND COUNTY	33,763
59	PASQUOTANK COUNTY	31,298
60	YADKIN COUNTY	30,488
61	PERSON COUNTY	30,180
62	PENDER COUNTY	28,855
63	BLADEN COUNTY	28,663
64	DAVIE COUNTY	27,859
65	ALEXANDER COUNTY	27,544
66	JACKSON COUNTY	26,846
67	TRANSYLVANIA COUNTY	25,520
68	MARTIN COUNTY	25,078
69	MACON COUNTY	23,499
70	ANSON COUNTY	23,474
71	MONTGOMERY COUNTY	23,352
72	HOKE COUNTY	22,856
73	DARE COUNTY	22,746
74	HERTFORD COUNTY	22,523
75	ASHE COUNTY	22,209
76	NORTHAMPTON COUNTY	20,798
77	CASWELL COUNTY	20,693
78	BERTIE COUNTY	20,388
79	CHEROKEE COUNTY	20,170
80	WARREN COUNTY	17,265
81	MADISON COUNTY	16,953
82	YANCEY COUNTY	15,419
83	GREENE COUNTY	15,384
84	AVERY COUNTY	14,867
85	MITCHELL COUNTY	14,433
86	POLK COUNTY	14,416
87	WASHINGTON COUNTY	13,997
88	CURRITUCK COUNTY	13,736
89	CHOWAN COUNTY	13,506
90	PAMLICO COUNTY	11,368
91	SWAIN COUNTY	11,268
92	PERQUIMANS COUNTY	10,447
93	ALLEGHANY COUNTY	9,590
94	JONES COUNTY	9,414
95	GATES COUNTY	9,305
96	GRAHAM COUNTY	7,196

LINC Rankings Report N.C. State Data Center 06/17/93
Variable 5001 : Population (Census/Estimate/Projection)
Year 1990

RANK	Area Name	V5001 Population
97	CLAY COUNTY	7,155
98	CAMDEN COUNTY	5,904
99	HYDE COUNTY	5,411
100	TYRRELL COUNTY	3,856

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 527 A BILL TO BE ENTITLED AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit B

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S527-ARH-002

Date _____ ,1999

Comm. Sub. [x]
Amends Title []
S527-PCSA151-RH

Representative _____

1 moves to amend the proposed House committee substitute on page 2,
2 line 1, by deleting the word "police" and by substituting the phrase
3 "law enforcement".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Exhibit C

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 527

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S527-ARH-004

Date ,1999

Comm. Sub. [x]
Amends Title []
S527-PCSA151-RH

Representative

moves to amend the proposed House committee substitute on page 2, line 3, by deleting the phrase "and a vehicle identification ~~number~~" Signal

and on page 2, lines 3-4, by deleting the phrase "control devices, signs, or".

SIGNED
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 527
Proposed House Committee Substitute S527-PCSA151-RH

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS ON CITY STREETS AND STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

(5) Authorizing police or fire department vehicles, ambulances, and rescue squad emergency service vehicles, equipped with a siren and a vehicle identification signal, to preempt any traffic control devices, signs, or signals upon city streets within local authority boundaries or, with the approval of the Department of Transportation, on State highways within the boundaries of local authorities. The Department of Transportation shall respond to requests for approval within 60 days of receipt of a request.

Signs shall be erected giving notices of ~~such~~ the special limits and ~~regulations.~~ regulations under subdivisions (1) through (4) of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 527

Short Title: Emergency Traffic Ordinances. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS OR SEMAPHORES ON STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"**§ 20-169. Powers of local authorities.**

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

(1) ~~the regulation of~~ Regulating traffic by means of traffic or semaphores or other signaling devices and for the preemption of any signaling devices upon city streets or state highways within local government boundaries by the emergency vehicles set forth in G.S. 20-157 on any portion of the highway where traffic is heavy or ~~continuous and may prohibit~~ continuous.

(2) Prohibiting other than one-way traffic upon certain ~~highways, and may regulate~~ highways.

(3) Regulating the use of the highways by processions or ~~assemblages and except that local authorities shall have the power to regulate~~ assemblages.

(4) Regulating the speed of vehicles on highways in public ~~parks, but signs~~ parks.

Signs shall be erected giving notices of ~~such~~ the special limits and regulations."

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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 852 A BILL TO BE ENTITLED AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 852
Judiciary I Committee Substitute Adopted 4/27/99

Short Title: Drug Treatment Court Amendments. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

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

SENATE BILL 852:
Drug Treatment Court Amendments

BILL ANALYSIS

Committee: House Judiciary II Committee
Date: June 1, 1999
Version: 2nd Edition

Introduced by: Senators Jordan and Ballance
Summary by: Steven Rose
Committee Counsel

SUMMARY: ***This bill allows a defendant who is eligible for the Drug Treatment Court Program to be placed on probation, if the prosecutor has deferred prosecution in the case, with court approval, so that the defendant can participate in the Drug Treatment Court Program (Article 62, Chapter 7A). The bill also adds as a special condition of probation the participation in and the successful completion of a Drug Treatment Court Program. The act becomes effective when it becomes law. (See statutes below.)***

§ 15A-1341. Probation generally.

(a) Use of Probation. - Unless specifically prohibited, a person who has been convicted of any criminal offense may be placed on probation as provided by this Article if the class of offense of which the person is convicted and the person's prior record or conviction level under Article 81B of this Chapter authorizes a community or intermediate punishment as a type of sentence disposition or if the person is convicted of impaired driving under G.S. 20-138.1.

(a1) Deferred Prosecution. - A person who has been charged with a Class H or I felony or a misdemeanor may be placed on probation as provided in this Article on motion of the defendant and the prosecutor if the court finds each of the following facts:

(1) Prosecution has been deferred by the prosecutor pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(2) Each known victim of the crime has been notified of the motion for probation by subpoena or certified mail and has been given an opportunity to be heard.

(3) The defendant has not been convicted of any felony or of any misdemeanor involving moral turpitude.

(4) The defendant has not previously been placed on probation and so states under oath.

(5) The defendant is unlikely to commit another offense other than a Class 3 misdemeanor.

(b) Supervised and Unsupervised Probation. - The court may place a person on supervised or unsupervised probation. A person on unsupervised probation is subject to all incidents of probation except supervision by or assignment to a probation officer.

(c) Repealed by Session Laws 1995, c. 429, s. 1, effective January 1, 1997.

§ 15A-1343(b1). Special Conditions of probation.

(b1) Special Conditions. - In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

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

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and

regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3, effective December 1, 1997.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

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

H852-SMRL-001

Jo. B. McCants, Counsel to Senate Judiciary I Committee, contributed to this summary.

Warren County Drug Treatment Court (DTC) (Judicial District 9)	
Type of Program	Post-sentence
Court Level	Superior Court/District Court
Fiscal Administrator	Warren County
Program Director (Part-time):	Mary Somerville Phone: 252-257-5172
Presiding DTC Judges	Robert H. Hobgood; J. Henry Banks
Other members of the DTC Core Team include:	Case Manager: *Kelly Henson (TASC)* Assistant D.A.: *Susan Thompson* Defense Attorneys: *Garey Balance; Jason Crump* Probation Officers: *Robert Terry (Supv.); Jonas Alston* DTC Volunteer: *Daria Holcomb* TASC Director: *Ken Marsh* Clinical Treatment Providers: *(1) John Hyman Center* *(2) VGFW Mental Health Center*
Program Implementation Date	December 5, 1996
State funds budgeted for FY 98-99	$38,164
# of clients served in CY 1998	15
# of graduates in CY 1998	2
# expected to serve in CY 1999	16
FY 99-00 Proposed Budget	$40,000 (Based on Projection of 7 New Admissions in FY 99-00)

Program Highlights:

Most program referrals come from the probation and district attorney's offices. Referred offenders are screened for addiction and eligibility by the part-time DTC Director or the TASC Case Manager. Interested and eligible offenders with pending charges must enter a guilty plea and accept successful completion of the DTC as a condition of a probationary sentence. Those with a pending probation violation(s) must admit the violation(s) in order to have their probation modified to include the condition of successful completion of the DTC. The Warren DTC is a small program located in a sparsely populated rural county (pop. = 18,140). Its geographical expansiveness, small population, and rural housing configuration add particularly challenging obstacles to the already imposing hurdles involved in addiction recovery. The community has embraced the DTC concept as a vehicle to confront the problems of addiction within their county. Partnerships have been forged with the Area Mental Health Center, Dept. of Social Services—Child Protective Services, Warren Family Institute, Children's Crime Protection Team, the Guardian ad Litem Program, and several local area churches to assist with meeting the diverse needs of this sub-population of addicts. In response to this outpouring of community commitment, many of the participants have made significant strides educationally and physically, and in carrying out their employment and familial responsibilities.

Person/Caswell Counties Drug Treatment Court (DTC) (Judicial District 9A)	
Type of Program	Pre-plea
Court Level	District Court
Fiscal Administrator	Person County
Program Director/Treatment Case Manager	Alfred Faulkner Phone: 336-597-0575
Presiding DTC Judge	Pattie S. Harrison
Other members of the DTC Core Team include:	Assistant D.A.: *Roger Echols* Defense Attorneys.: *Tom Fitzgerald; Theresa Pressley* Probation Officer: *Angie Johnson* Law Enforcement: *Lt. Kevin Crabtree; Det. Tony Kirby* Clinical Treatment Providers: *(1) CSAC* *(2) Life Changes, Inc.* Community Corrections Coordinator: *Dossie Goods*
Program Implementation Date	July 1, 1996
State funds budgeted for FY 98-99	$75,741
# of clients served in CY 1998	27
# of graduates in CY 1998	8
# expected to serve in CY 1999	36
FY 99-90 Proposed Budget	$73,000 (Based on Projection of 24 New Admissions in FY 99-00)

Program Highlights:

Magistrates keep a running list of all defendants charged with a drug-related offense and make available DTC brochures and application forms to all arrestees. The DTC Treatment Case Manager communicates regularly with the magistrates and screens interested defendants to determine addiction and eligibility for the DTC. DTC sessions convene every Friday afternoon immediately after the weekly DTC team staffing. The DTC works closely with the Day Reporting Center, Piedmont Community College, DART-CHERRY, Teen Challenge, Wilmington Treatment Center, Day-by-Day Treatment Center, NA/AA, and others in providing educational, vocational, residential treatment, and other services to DTC participants. Strict monitoring requirements are imposed on all participants: e.g., those missing work must call to inform the Treatment Case Manager; those who are unemployed are required to report to the county's Day Reporting Center to perform community service work. Each participant must contribute $300 to the program prior to graduation. Fees are collected by the Clerk of Court. The substance abuse treatment provider is located on-site at the DTC facility. Improvements to the Person/Caswell DTC in the planning stages include: addition of on-site parenting and employment counseling, twice-weekly on-site NA/AA meetings, ongoing DTC alumni aftercare and family support groups; pastoral counseling as requested, creation of a victim restoration component, and establishment of a halfway house for DTC participants.

Wake County Drug Treatment Court (DTC) (Judicial District 10)	
Type of Program	Post-sentence
Court Level	Superior Court
Fiscal Administrator	Carolina Correctional Services, Inc. *(Todd Edwards, Administrator)*
Program Coordinator	Joe Hazel Phone: 919-856-6197
Presiding DTC Judge	Robert L. Farmer (Henry V. Barnette, Jr., eff. Jan. 1999)
Other members of the DTC Core Team include:	Treatment Case Manager: *Lindy Brown, MSW* D.A.s: *Becky Holt; Frank Jackson; Michele Sparrow* Defense Attorneys: *Bryan Collins; Richard Graham* Probation Officers: *Theron Dennis; Bradley Richards; MaryAnn Sorice; Erica Ward* Clinical Treatment Provider: *Spectrum Health Services* CCS Director of Programs: *Thomas McLoughlin*
Program Implementation Date	May 24, 1996
State funds budgeted for FY 98-99	$180,030
# of clients served in CY 1998	78
# of graduates in CY 1998	19
# expected to serve in CY 1999	95
FY 99-00 Proposed State Budget	$169,000 (Based on Projection of 72 New Admissions in FY 99-00)

Program Highlights:

Developed and maintained under the leadership of Carolina Correctional Services, Inc., whose Board of Directors includes the D.A. and the Chief District Court Judge, the Wake County DTC prides itself on its highly efficient team approach to enhancing the recovery efforts of DTC clients. Empowered by the DTC Judge, each of the core team players can be counted on to carry out well-defined roles. One need only observe the DTC pre-court case "staffing" and court session to see and feel the cohesiveness, commitment, and efficiency of the DTC team. It is truly a "partnership" that has transcended the antagonistic roles long associated with criminal justice system adversaries. The Wake DTC continues to learn and modify its approach as it strives to add more comprehensive treatment options, more structure, and more participant encouragement to enhance the participants' likelihood of achieving and maintaining a recovery lifestyle. Program enhancements for the Superior Court DTC in FY 99-00 will include creation of a weekly support group for participants' families, expansion of the alumni aftercare group, and increased involvement of local religious groups. The Juvenile DTC was implemented in October, 1998, and the pre-plea District Court DTC is in the final planning stages. The District Court DTC will target addicts with less serious criminal histories than those targeted by the Superior Court DTC. It will also seek to include addicts who are not meeting their child support obligations as well as those who are under the supervision of DSS for child neglect.

Wake County Juvenile Drug Treatment Court (JDTC) (Judicial District 10)	
Type of Program	Post-adjudication
Court Level	Juvenile District Court
Fiscal Administrator	Carolina Correctional Services, Inc. (*Todd Edwards, Administrator*)
Program Manager	Rebecca Marks Phone: 919-857-9292
Presiding JDTC Judge	Russell G. Sherrill, III
Other members of the JDTC Core Team include:	Assistant D.A.: *Rosa Dula* Defense Attorneys: *Lori Christian* Court Counselors: *Tim Montgomery; Donald Pinchback* *MaryAnn Sorice* Clinical Treatment Provider: *Spectrum Health Services* *Southlight* Program Coordinator: *Joe Hazel* CCS Director of Programs: *Thomas McLoughlin*
Program Implementation Date	October 30, 1998
State funds budgeted for FY 98-99	Funded by the Governor's Crime Commission ($141,160)
# of clients served in CY 1998	12
# expected to serve in CY 1999	25
FY 99-00 Proposed State Budget	Funded by the Governor's Crime Commission

Program Highlights:

Developed and maintained under the leadership of Carolina Correctional Services, Inc., whose Board of Directors includes the D.A. and the Chief District Court Judge, the Wake County JDTC is the first court-driven treatment program of its kind in North Carolina. The JDTC operates by a team, comprised of: the Chief District Court Judge, Assistant District Attorney, Defense Attorney, Juvenile Court Counselors, Court Services Manager, and Substance Abuse Counselor. Each of the team members uniquely contributes to the holistic treatment plan implemented for each participant and his/her family. The team meets on a weekly basis to discuss each juvenile's progress and make recommendations to the Judge. In an effort to hold the participants accountable throughout the recovery process, all participants and their parent(s) are required to appear at a regularly scheduled bi-weekly court session for a review of each participant's behavior, drug tests, and accomplishments over the prior two weeks. Immediate sanctioning/rewarding is vital to the improved likelihood of achieving and maintaining a recovery lifestyle. The Wake JDTC continues to seek innovative treatment options and to encourage youths to make behavioral changes while improving communication within the family structure itself. Program enhancements will include the development of family therapy, continuing care, support groups, and mentorships.

Forsyth County Drug Treatment Court (DTC) (Judicial District 21)	
Type of Program	Pre-plea
Court Level	District Court
Fiscal Administrator	CenterPoint Human Services
Program Director	Sonia Riley Phone: 336-724-9891
Presiding DTC Judge	Ronald E. Spivey
Other members of the DTC Core Team include:	Treatment Case Manager: *Annettia Evans* D.A.s: *Fred Bauer; Tim Severo* Defense Attorney: *Theresa Hier* Probation Officers: *Scott Bauer; Jack Bullard* Law Enforcement: *B. Scott Ogle; Lt. Terry Jones* Clinical Treatment Provider: *Charter Behavioral Hlth Sys* Residential Treatment Provider: *ARCA; DART-CHERRY*
Program Implementation Date	June 14, 1996
State funds budgeted for FY 98-99	$138,107
# of clients served in CY 1998	75
# of graduates in CY 1998	14
# expected to serve in CY 1999	82
FY 99-00 Proposed State Budget	$145,000 (Based on Projection of 60 New Admissions in FY 99-00)

Program Highlights:

The Forsyth DTC targets addicts with extensive substance abuse histories. A cornerstone of the program can be found in the linkages established with the probation office and local law enforcement. All participants begin the DTC program under the supervision of a specially trained intensive probation team. The biweekly case review and DTC sessions are staffed not only by the judge, treatment staff, assistant district attorney, designated defense counsel and probation officer(s), but also a designated community police officer. Interestingly, the Winston-Salem Police Department maintains computerized records of all police contacts, allowing it to monitor the progress of all DTC participants. Their February 1998 analysis of the 40 active DTC participants revealed that the participants had a total of 1,470 police contacts (as suspect, complainant, witness or victim) prior to entry into the DTC. Since entry into the DTC, the corresponding number of police contacts made by active participants as of February 1998 has been 9. Needless to say, the Winston-Salem Police Department has become one of the most outspoken proponents of the DTC concept. (Data was not available for the DTC participants who were active as of February 1999.) While Forsyth DTC has been operating since inception as a pre-plea program, in 1999 the program will also begin admitting participants who have been formally convicted and sentenced to the DTC.

Mecklenburg County Drug Treatment Court (DTC) (Judicial District 26)	
Type of Program	Pre-plea and Post-sentence
Court Level	District Court and Superior Court
Fiscal Administrator	Administrative Office of the Courts
Program Director	Karen Simon Phone: 704-358-6216
Presiding DTC Judges	Philip F. Howerton, Jr.; C. Jerome Leonard, Jr.; Raymond A. Warren
Other members of the DTC Core Team include:	Treatment Case Managers: *Rosalyn James; Don Moore; John White* D.A.s: *Carla Archie; Maria Long; Amanda Mingo* Public Defenders: *Steve Meier; Kevin Tully; Bob Ward* Probation Officers: *Donna Downing (Supv.); Susie Flynn; Jennifer Kuehn; Anthony Mitchell; Tonya Oxendine; Scott Plaster* Law Enforcement: *Major Tommy Barnes; Capt. Ernie Kirchen* IOP Treatment Providers: *Chemical Dependency Ctr; Dilworth Center; SE Addiction Inst. & Learning Ctr.* Residential Treatment Providers: *McLeod Center; Hope Valley*
Program Implementation Date	March 27, 1996
State funds budgeted for FY 98-99	$304,270
# of clients served in CY 1998	233
# of graduates in CY 1998	28
# expected to serve in CY 1999	319
FY 99-00 Proposed Budget	$453,000 (Based on Projection of 214 New Admissions in FY 99-00)

Program Highlights:

The Mecklenburg DTC improved significantly during CY 1998. It refined and expanded its management committee, management staff, treatment linkages, targeting and intake, sanctions and incentives, and treatment requirements so as to better achieve the program goals. It opened a Superior Court, post-sentence DTC, based in part on the experience and success of the Wake Superior Court DTC. As a result, Intensive Probation has now become a part of DTC. Additional providers have allowed for greater opportunity, participation and competition among treatment providers. The management has been placed in the Trial Court Administrators Office to allow for a more effective and efficient management process through the Management Committee, the Senior Resident Superior Court Judge, and the Chief District Court Judge. Case Managers and Probation Officers have developed a more comprehensive team approach, and Treatment Counselors participate more closely with the court on a regular basis to identify and resolve issues for clients or the court process. The Mecklenburg DTC has received $150,000 for a Smart Start grant to provide much needed child care services and assistance to the children of DTC clients and their families. This assistance has also been made available through DTC to other programs in Mecklenburg County, including the Structured Day Program (funded through the Criminal Justice Partnership Board) and other programs involving children of offenders in the criminal justice system.

SUMMARY HANDOUT ON THE DRUG TREATMENT COURT PROGRAM FOR THE HOUSE JUDICIARY II COMMITTEE

(8 June 1999)

I. Current Program Districts

District	Program Type
District 9 (Warren)	Post-Sentence/District Court Post-Sentence/Superior Court
District 9A (Caswell, Person)	Pre-Plea/District Court (soon to begin Post-Sentence as well)
District 10 (Wake)	Post-Sentence/Superior Court Post-Adjudication/Juvenile Court
District 21 (Forsyth)	Pre-Plea and Post-Sentence/District Court
District 26 (Mecklenburg)	Pre-Plea and Post-Sentence/District Court Post-Sentence/Superior Court

II. Program Purpose

- The purpose of the program is to (1) hold defendants accountable for their criminal behavior while (2) addressing the substance abuse difficulties that gave rise to that criminal behavior.

III. Program Design

- **Program Eligibility**: Only those defendants who are chemically dependent and whose lives have become unmanageable as a result are eligible for the program. Each program site has a local Drug Treatment Court (DTC) team that screens eligible defendants and monitors the progress of those defendants.
- **Program Elements**: Each defendant must participate in an intensive substance abuse treatment program lasting a minimum of twelve months. Defendants are subject to random drug tests and frequent in-court reviews by the presiding judge. Each defendant also must be employed, attending school, or working to obtain a GED. The program also provides additional services to defendants such as mental health therapy, parenting classes, life skills training, vocational training, and the like.
- **Program Completion**: In order to graduate from the program, a defendant must (1) have completed all phases of his or her treatment program, (2) not have tested positive for drug use during the preceding four to six months, (3) be employed, attending school, or working to obtain a GED, (4) be paying regularly toward any financial obligations such as child support, (5) not have engaged in any criminal behavior while in the program and (6) have been nominated for graduation by the local DTC team.

IV. Program Participants for the Calendar Year 1998

- Total number of defendants served by the DTC Program: 392
- Number of defendants terminated from the program: 175
- Number of defendants who graduated from the program: 71
- Number of defendants still active in the program as of 31 December 1998: 146

V. Assistance of Counsel in the Pre-Plea Districts

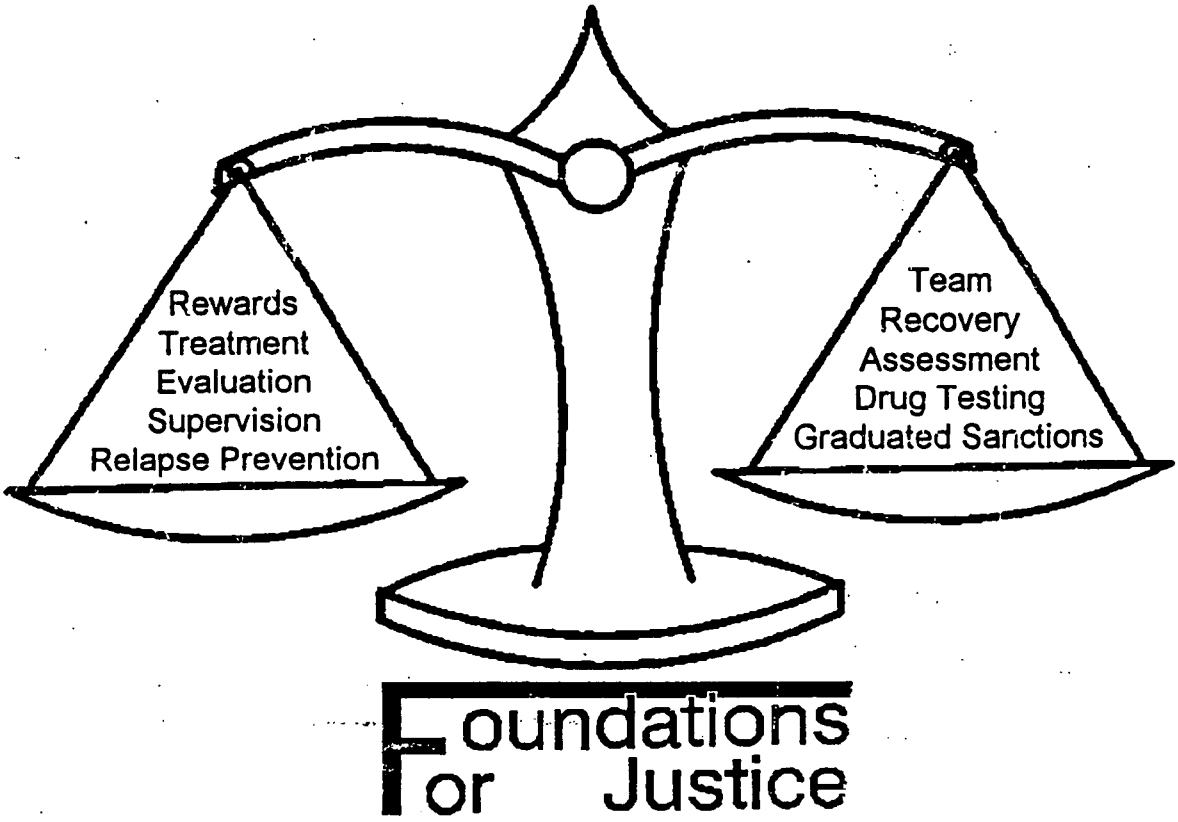
Pre-Plea District	Defense Attorney(s)	Comments from Defense Attorneys on the Legal Assistance Provided to Defendants Prior to their Entry into the Program
District 9A (Caswell, Person)	Thomas L. Fitzgerald Theresa K. Pressley (private practitioners)	According to Mr. Fitzgerald, defendants who eventually enter the program are assigned (or retain) an attorney following their arrest just as any other criminal defendant. The Office of the District Attorney may recommend the program to the defendant's counsel, or the defendant's counsel may be aware of the program and request that the defendant be allowed to participate. As a condition of entering the program, the defendant must acknowledge his or her guilt of the crime charged. The defendant is represented by his or her appointed (or retained) counsel at this stage. Once the defendant enters the program, either Mr. Fitzgerald or Ms. Pressley represents the rights of the defendant during the treatment process.
District 21 (Forsyth)	Teresa L. Hier (private practitioner)	Ms. Hier explained that around one-half of the defendants who eventually enter the program are assigned (or retain) an attorney following their arrest just as any other criminal defendant. This attorney assists the defendant in determining whether to enter the DTC program or contest the charges. The other one-half of the defendants are referred to Ms. Hier prior to the appointment of attorney. In those instances, Ms. Hier reviews the defendant's case to assist him or her in making the appropriate decision.
District 26 (Mecklenburg)	Robert L. Ward (assistant public defender)	Mr. Ward informed us that the defendants who eventually enter the program are assigned (or retain) an attorney following their arrest just as any other criminal defendant. This attorney assists the defendant in determining whether to enter the DTC program or contest the charges. Most often, the defendant is represented during this early stage by an assistant public defender. In such cases, Mr. Ward works with this public defender to advise the defendant of his or her rights and interests. Once a defendant has entered the program, Mr. Ward represents the defendant's interests.

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Guidelines

for

Pilot Drug Treatment Courts



North Carolina
Administrative Office of the Courts

November 1995

Public Defender or Defense Attorney

The public defender or defense attorney works collaboratively with the judge and district attorney while ensuring that the rights of the drug treatment court participants remain protected. Often with a drug treatment court program, defense attorneys find that they are not the participants' only advocates, but rather that other court officials are also supportive of their clients.

The primary responsibilities of the public defender or defense attorney are to:

- advise participants of their constitutional rights
- explain the drug treatment court program to potential participants (i.e., purpose of the program, program requirements, consequences of program completion or non-completion)
- evaluate the merits of each defendant's case to make appropriate recommendations regarding admission to the drug court program (i.e., is participation in drug treatment court in the person's best interests?) and identify legal issues
- explain waivers or stipulations necessary to participate in drug treatment court (such as requirements to waive speedy trial or to stipulate guilt)
- represent drug treatment court participants in each session of drug treatment court
- communicate often with the treatment provider concerning each participant's progress in treatment and any obstacles that the participant may be facing that may influence his or her progress in treatment or compliance with the program
- establish a supportive relationship with drug treatment court participants in order to encourage their program compliance
- help to maintain a non-adversarial atmosphere in drug treatment court.

VISITOR REGISTRATION SHEET DATE 22 JUNE 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL SCOGGIN	NC Bd
Jim Blackburn	Association of County Commissioners
Patrice Roesler	
FRAN Ratigan	NCRMA
George Leggett	N.C Attorney General's Office
J. Edwards	DMV Enforcement
Eddie Caldwell	H McCC&C, P.A.
Steven T. Rogers	City of Wilson
Randy Monchick	AOC
Dorn Kent	Dist - 21st
Matt Osborne	AOC
Angie Whitener	GA intern
C.C. Smith	Wilson P.D.
Maurice Barnes	City of Wilson
David J. Speight	city of Wilson
Sarah Rogers	Wilson
John Campbell	City of Wilson
Marjorie Campbell	City of Wilson
Becket Davis	City of Wilson
Velma L. Foreman	Beacon Point
Councilman Harry Harrison	City of Wilson
Joseph C Lucas	City of Wilson
Bill Rogers	NC Justice Center
Al Jarrett	NCSSA

VISITOR REGISTRATION SHEET DATE

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	City of Wilson, P.O. 10 Wilson NC 27893
[illegible]	City of Wilson
JIM BRADSHAW	CITY OF WILSON
[illegible]	City Wilson N.C.
[illegible]	City of Wilson - Councilman
Lynn Bonner	News & Observer
Henry M Lancaster III	NCLM
David Elliott	DOJ
Andy Romanet	NC.LM.
Tony Peoples	NCDOT
DANNY DEVANE	NC DOT
MILTON DEAN	NCDOT
[illegible]	N.C Senate
Charles Williams	NC Assn. Chiefs of Police
[illegible]	AAA Carolinas
[illegible]	NC Bar Association
David Ferrell	HMCC&C-PA

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, June 29, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

SB 908 REVISE UCC RECEIPTS. SENATOR MILLER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JUNE 29, 1999
12:00 P.M.

The meeting was called to order by the Chairman, Rep. Braswell, and the Pages, Margaret Johnson of Alamance County, Beasan Hamdan of Carteret County, Asheera Israel of Wayne County, and Chris Franklin of Burke County were introduced.

The bills before the Committee were **SB 830 (Short title: Auto Work Repair Disclosures)** sponsored by Senator Miller, and **SB 908 (Short title: Revise UCC Receipts),** sponsored by Senator Albertson.

Rep. Miller was recognized to explain SB 830. A Proposed Committee Substitute for SB 830 was placed before the Committee and Rep. Hensley moved that the Proposed Committee Substitute be brought before the Committee for consideration. Rep. Miller stated that Triple AAA, NC Consumer Council, the Attorney General's Office, and the Independent Garages Association supported the bill. The Attorney General's Office had requested an amendment. Rep. Hensley brought the amendment before the committee and moved for adoption of the amendment. The Committee adopted the amendment.

Rep. Capps indicated that he would offer an amendment on the floor in regard to "shop charges" that are sometimes added to repair bills. He wanted an indication as to how the committee members felt about his proposed amendment. Eddie Caldwell of the Independent Garage Association stated that the Association was concerned about the continued regulation of the industry, and did not feel that the situation described by Rep. Capps warranted further regulations upon the Association. There were other questions from the committee and the Chair requested that Staff Counsel research those questions and the Committee would continue the discussion of the bill at a later date.

The next bill on the agenda was **SB 908 (Short title: Revise UCC Receipts).** This bill had been before the Committee on several previous occasions. Senator Albertson and Staff Counsel were recognized to explain the Proposed Committee Substitute for SB 908. The UCC receipts could be in written or electronic form. The warehouseman would have the responsibility of properly issuing the lien. Rep. Sherrill moved for a favorable report of the Proposed Committee Substitute and an unfavorable report to the original bill. The committee substitute was given a favorable report.

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Crawford	Rep. Hensley
Rep. Jarrell	Rep. Kiser	Rep. Russell
Rep. Sherrill		

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 830

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

S830-ARH-002

Date_____,1999

Comm. Sub. [x]
Amends Title []
S830-CSRH-002

Representative _____

moves to amend the proposed House committee substitute on page 6, lines 23-25, by deleting those lines;

and on page 6, line 26, by deleting "(3)" and by substituting "(2)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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S830-CSRH-002
SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE
THIS IS A DRAFT 21-JUN-99 21:01:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"§ 20-354. Short title.

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"§ 20-354A. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.
b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars ($350.00).

(6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.

(7) When an insurer has authorized a motor vehicle repair shop to perform the repair and had agreed to pay the cost of the repair.

"§ 20-354B. Definitions.

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or

restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars ($350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article.

"§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work

will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless the reassembled vehicle would be unsafe.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic works has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It shall be unlawful for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"§ 20-354F. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"§ 20-354G. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars ($350.00).

(2) The telephone number of the Consumer Protection Division of the Attorney General's Office for consumer information.

(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

SENATE BILL 830:
Auto Repair Work Disclosures

BILL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Miller
Date:	June 22, 1999	**Summary by:**	Robin Johnson & Steven Rose
Version:	S830-CSRH-002		Committee Counsel

SUMMARY: Senate Bill 830 would create the North Carolina Motor Vehicle Repair Act. The Act would require motor vehicle repair shops to adhere to the following concerning repairs and repair estimates:

- Unless waived by the customer in writing, the shop must prepare a written estimate, when the estimated cost of repair is more than $350, before doing any diagnostic work or repair. (The waiver can be for a period of time). The estimate must disclose any vehicle storage charges and that the customer can ask for replaced parts to be saved for inspection or return. A shop that does not agree to perform the repair work would not be required to do an estimate.
- Before preparing an estimate, a shop must (i) disclose to the customer the amount, if any, of the charge for doing the estimate and (ii) obtain authorization on the written estimate to prepare the estimate. The charge for an estimate cannot be excessive in relation to the work performed for the purpose of inducing the customer to waive his or her rights under the act. The shop cannot require the customer to waive his or her rights under this Act as a prerequisite for repairing the vehicle.
- The shop must promptly notify the customer of additional repair work and its cost if (i) the initial estimate was only for the diagnostic work and that work has been completed, (ii) the actual charges for repair work will exceed the estimate by more than 10%, or (iii) the diagnostic work has been completed on a vehicle that was dropped off at the shop during off hours or by someone other than the owner (implied partial waiver). Once notified, the customer can authorize, modify, or cancel the repair. If a customer cancels an authorized repair after it has begun because the repair cost will exceed the estimate, the shop must re-assemble the vehicle and may charge for the tear-down and the reassembly if the customer has been notified of these possible costs from the beginning.
- A shop cannot charge more than 10% over its estimate for repairs unless the customer has consented, nor can it keep the owner's vehicle (under a possessory lien) when the final cost is more than 10% over the estimate and the customer pays the amount of the estimate plus 10%.
- The shop must give the customer an invoice of the completed repair work, including an itemized list of parts, labor, and merchandise supplied and the costs thereof, and the use of replacement parts.
- The shop must conspicuously post a sign that discloses the customer's right to receive or waive a written estimate if the repair cost is over $350, the telephone number of the Attorney General's Consumer Protection Division for consumer information, and the customer's right to the return or inspection of parts that have been replaced. (The right to the return of parts does not apply if the shop has a warranty arrangement or exchange parts program with a manufacturer, distributor, or supplier – see 20-354E(e)).
- It would be unlawful under this Act for a shop or its employees, among other things, to charge for unauthorized repairs, make certain misrepresentations, fraudulently alter an invoice or estimate or

misuse the customer's credit card, make misleading statements, make false promises to induce a customer to get his vehicle repaired. A person injured by a violation of this Act would be allowed to bring an action in court. The prevailing party may be entitled to the recovery of court costs and attorneys fees in addition to damages.

For purposes of this Act, a motor vehicle repair shop would include any person who repairs motor vehicles of another for compensation, mobile motor vehicle repair shops, motor vehicle dealers, garages, service stations, truck stops, paint and body shops, brake, muffler and transmission shops, glass work shops, and self-employed individuals that perform this work for compensation. However, the following would be exempt:

1. Government repair shops servicing their own vehicles
2. Persons servicing their own vehicles or for-hire vehicles that are rented for periods of 30 days or less
3. Persons repairing vehicles used principally in agriculture and only incidentally operated on the highways
4. Persons servicing vehicles solely for vehicle auctions
5. Sale and installation of tires.

This act would take effect when it becomes law.

This summary contributed to by Linwood Jones, Committee Counsel for Senate Commerce.

H830-SMRH-002

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.
(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.
(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article.

"§ 20-354I. Remedies.

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Section 2. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"**§ 20-354. Short title.**

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"**§ 20-354A. Scope and application.**

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons performing motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop when performing only minor repair services.

(6) Any person or motor vehicle repair shop performing repairs on commercial construction equipment.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Division' means the Division of Motor Vehicles.

(3) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(4) 'Final estimate' means the last estimate approved by the customer, either in writing or orally, as evidenced by the written repair estimate.

(5) 'Minor repair service' includes any of the following:

a. Repairing and changing tires.

b. Lubricating vehicles.

c. Cleaning, adjusting, and replacing spark plugs.

d. Changing oil and oil filters.

e. Replacing, adjusting, repairing, or servicing hoses and air filters.

f. Changing or otherwise servicing any of the following:

1. Coolant.

2. Automatic door lamp switch.

3. Battery, battery ground cable, battery hold-down strap, battery positive cable, and battery-to-starter relay cable.

4. Fan and alternator drive belts.

5. Fuses.

6. Headlamp foot dimmer.

7. Horns.

8. Ignition coil output wire.

9. Light bulbs and headlamps.

10. Ornamental accessories.

11. Power steering pump belt.

12. Wheels, except alignment.
13. Windshield washer tank.
14. Wiper blades.
15. Any other minor service which the Division has designated by rule may be performed by persons without skills and knowledge required of motor vehicle mechanics and helpers. No service shall be considered as minor if the Division finds that the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.

(6) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(7) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

(8) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed one hundred dollars ($100.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily

charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of three working days from the date of the notification.

(b) The information required by subsection (a) need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtains a written authorization to prepare an estimate if there is a charge for that estimate. No motor vehicle repair shop shall impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop.

"§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following apply, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair after being advised that a repair which he or she has authorized cannot be accomplished within the previously authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless either of the following apply:

(1) The customer waives reassembly.

(2) The reassembled vehicle would be unsafe.

After cancellation of the repair order, the shop may charge for the cost of teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the estimate prior to commencement of the diagnostic work.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate plus ten percent (10%), unless the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsection (a) of this section.

(d) It shall be unlawful for any motor vehicle repair shop to fail to return any customer's motor vehicle because the customer has refused to pay for repair charges that exceed a written estimate by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate plus the ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"§ 20-354F. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"§ 20-354G. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That if the cost of repairs will exceed one hundred dollars ($100.00) that the consumer has a right to a written estimate and may waive the right to the written estimate.
(2) The toll-free telephone number of the Division for consumer information and assistance.
(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.
(2) Misrepresent that repairs have been made to a motor vehicle.
(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.
(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.
(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
(11) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Willfully depart from or disregard accepted practices and professional standards.
(13) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee

demonstrates that the customer could not reasonably have been notified.

(14) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(15) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court."

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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II**.

☐ Committee Substitute for
S.B. 908 A BILL TO BE ENTITLED AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S908-CSRH-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 908
THIS IS A DRAFT 1-JUN-99 09:03:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors:

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT A WAREHOUSE RECEIPT ISSUED IN ELECTRONIC FORM IS EFFECTIVE TO CREATE A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

§25-7-209. Lien of warehouseman.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such

charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

(5) A warehouseman's lien is effective under this section if the receipt is in written or electronic form."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 908
Proposed House Committee Substitute S908-PCS1771-RH

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT A WAREHOUSE RECEIPT ISSUED IN ELECTRONIC FORM IS EFFECTIVE TO CREATE A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

"**§ 25-7-209. Lien of warehouseman.**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in

subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3)(a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

(5) A warehouseman's lien is effective under this section if the receipt is in written or electronic form."

Section 2. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 908

Short Title: Revise UCC Warehouse Receipts. (Public)

Sponsors: Senators Albertson; Carpenter, Clodfelter, Harris, Hoyle, Kerr, Metcalf, Warren, and Weinstein.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT WAREHOUSEMEN DO NOT HAVE TO ISSUE WRITTEN RECEIPTS AS A PRECONDITION TO CREATING A LIEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-7-209 reads as rewritten:

"**§ 25-7-209. Lien of warehouseman.**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever ~~deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods,~~ deposited, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for ~~a maximum amount specified on the receipt for charges other than those specified in~~

~~subsection (1), such as for money advanced and interest.~~ charges other than those specified in subsection (1) of this section, such as for money advanced and interest, but if a receipt is issued for the goods, such a security interest is not valid against third persons without notice unless the maximum amount thereof is conspicuously stated on the receipt. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under G.S. 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 908:
Revise UCC Receipts.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Senator Albertson
Date:	June 1, 1999	**Summary by:**	Robin S. Johnson
Version:	First -- PCS S908-CSRH-001		Committee Counsel

SUMMARY: The PCS for Senate Bill 908 would amend Section 209 of Article 7 of the Uniform Commercial Code to permit a warehouseman to issue electronic receipts that would create a valid lien on goods held for charges or expenses arising from other goods and for other charges such as money advanced or interest.

CURRENT LAW: Current law requires a warehouse receipt to be in written or printed form in order to create a lien under G.S. 25-7-209.

BILL ANALYSIS: The PCS would amend G.S. 25-7-209 by allowing warehouse receipts to be in written or electronic form. The receipts, then, would be effective to create the liens that currently may be created by a written receipt.

EFFECTIVE DATE: The bill becomes effective October 1, 1999. It is not clear if these changes apply to goods placed with a warehouseman prior to October 1, 1999 or just to goods placed with a warehouseman on or after October 1, 1999.

Walker Reagan, Counsel, Senate Judiciary I, substantially contributed to this analysis.

S908-SMRH-002

VISITOR REGISTRATION SHEET

DATE 29 June 1999

JUDICIARY II

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Edwards	DMV ENF.
DAVID Elliott	DOT
Jane Pinsky	AAA Carolinas
Alan Hirsch	Atty Gen's Office
S Markham	EGHS
Eddie Caldwell	H/R CC&C PA
Mary Ann Talley	NCATL
[illegible]	NC Bar Assn
[illegible]	" "

AGENDA

HOUSE COMMITTEE ON
JUDICIARY II

Tuesday, July 6, 1999
ROOM 421 LOB
12:00 P. M.

CALL TO ORDER

Representative Braswell, Chairman

SB 830 AUTO REPAIR WORK DISCLOSURES. SENATOR MILLER

ADJOURNMENT

HOUSE COMMITTEE ON JUDICIARY II
COMMITTEE MEETING MINUTES
TUESDAY, JULY 6, 1999

The meeting was called to order by the Chairman, Rep. Braswell, and Katie Jo Sutton of Haywood County was introduced as the Page assisting the committee. The Chairman announced that this would be the last meeting for this committee for this session. He thanked Staff Counsel, the Committee Assistant and others for their assistance.

The Proposed Committee Substitute for **Senate Bill 830 (Short title: Auto Repair work Disclosures)** was the bill to be considered by the committee. Senator Miller sponsored this bill. The Chairman also advised the Committee that Staff had prepared another Committee Substitute that would allow for civil remedies instead of criminal. At this time the Chair opened the floor for discussion of the Proposed Committee Substitute from the previous meeting.

Staff was recognized to address questions raised at the last meeting. Rep. Hensley had questioned whether or not the new article would create a crime that would be punishable under the criminal laws? Staff Counsel, Robin Johnson, stated that because the language in the bill says "it is unlawful", then it would be punishable under the criminal law as a misdemeanor.

Eddie Caldwell of the North Carolina Service Station Association was recognized to speak on the bill. He asked that Committee adopt the bill that provided for civil remedies rather than criminal. Jane Penske of Triple AAA spoke against the Class I misdemeanor, and supported leaving out the criminal language that was in the original bill. Rep. Hensley spoke in support of leaving the criminal language in the bill. The bill sponsor, Senator Miller, indicated that he did not have a preference for either the criminal or civil language.

Rep. Capps sent forth an amendment (Exhibit A) and was recognized to explain the amendment. He moved for adoption of the amendment. Senator Miller and Eddie Caldwell spoke in opposition to the amendment. The Chair called for a vote on Rep. Capps' amendment by a show of hands. The amendment failed by a vote of 2 yes votes to 5 no votes.

The Chair called for the vote by a show of hands on the Proposed Committee Substitute as amended. The Proposed Committee Substitute as amended passed by a vote of 5 yes to 2 no votes.

The Chair asked if there was any other business to be discussed by the committee. There being none, the meeting was adjourned.

MEMBERS PRESENT:

Rep. Braswell	Rep. Barefoot	Rep. Cansler
Rep. Capps	Rep. Crawford	Rep. Hensley
Rep. Jarrell	Rep. Kiser	Rep. Russell

Respectfully submitted,

Blinda Edwards
Committee Assistant

Rep. Jerry Braswell, Chairman

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **BRASWELL** for the Committee on **JUDICIARY II.**

☒ Committee Substitute for
S.B. 830 A BILL TO BE ENTITLED AN ACT TO REGULATE AUTO REPAIRS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Exhibit A

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 830

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

S830-ARH-003.1

Date_____,1999

Comm. Sub. [x]
Amends Title []
S830-CSRH-002

Representative Capps

moves to amend the proposed House committee substitute on page 7, lines 43-44, by inserting between the lines the following new section:

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

'ARTICLE 35.

'Truthful Advertisements of Costs of Servicing or Repairing Private Passenger Vehicles.

'§ 66-280. Advertisements of servicing or repairing private passenger vehicles.

(a) Any business that services or repairs private passenger vehicles and advertises the costs of certain services or repairs of private passenger vehicles shall disclose in the advertisement all costs, except any fees and taxes that are required by law, that a consumer may be charged.

(b) If a business that services or repairs private passenger vehicles fails to comply with the requirements of this section, then, upon written notice to that business, the consumer is required to pay only those charges disclosed in the advertisement, plus any fees and taxes that are required by law.

(c) A violation of this section shall constitute an unfair trade practice under G.S. 75-1.1.

(d) For purposes of this section, 'private passenger vehicle' has

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 830

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

S830-ARH-003.1

the same meaning as in G.S. 20-4.01.'";

and by renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"§ 20-354. Short title.

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"§ 20-354A. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons performing motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop when performing only minor repair services.

(6) Any person or motor vehicle repair shop performing repairs on commercial construction equipment.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Division' means the Division of Motor Vehicles.

(3) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(4) 'Final estimate' means the last estimate approved by the customer, either in writing or orally, as evidenced by the written repair estimate.

(5) 'Minor repair service' includes any of the following:

a. Repairing and changing tires.

b. Lubricating vehicles.

c. Cleaning, adjusting, and replacing spark plugs.

d. Changing oil and oil filters.

e. Replacing, adjusting, repairing, or servicing hoses and air filters.

f. Changing or otherwise servicing any of the following:

1. Coolant.

2. Automatic door lamp switch.

3. Battery, battery ground cable, battery hold-down strap, battery positive cable, and battery-to-starter relay cable.

4. Fan and alternator drive belts.

5. Fuses.

6. Headlamp foot dimmer.

7. Horns.

8. Ignition coil output wire.

9. Light bulbs and headlamps.

10. Ornamental accessories.

11. Power steering pump belt.

12. Wheels, except alignment.
13. Windshield washer tank.
14. Wiper blades.
15. Any other minor service which the Division has designated by rule may be performed by persons without skills and knowledge required of motor vehicle mechanics and helpers. No service shall be considered as minor if the Division finds that the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.

(6) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(7) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

(8) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"**§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.**

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed one hundred dollars ($100.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily

charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of three working days from the date of the notification.

(b) The information required by subsection (a) need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"**§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.**

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtains a written authorization to prepare an estimate if there is a charge for that estimate. No motor vehicle repair shop shall impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop.

"**§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.**

(a) In the event that any of the following apply, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair after being advised that a repair which he or she has authorized cannot be accomplished within the previously authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless either of the following apply:

(1) The customer waives reassembly.

(2) The reassembled vehicle would be unsafe.

After cancellation of the repair order, the shop may charge for the cost of teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the estimate prior to commencement of the diagnostic work.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate plus ten percent (10%), unless the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsection (a) of this section.

(d) It shall be unlawful for any motor vehicle repair shop to fail to return any customer's motor vehicle because the customer has refused to pay for repair charges that exceed a written estimate by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate plus the ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"**§ 20-354F. Invoice required of motor vehicle repair shop.**

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"**§ 20-354G. Required disclosure; signs; notice to customers.**

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That if the cost of repairs will exceed one hundred dollars ($100.00) that the consumer has a right to a written estimate and may waive the right to the written estimate.
(2) The toll-free telephone number of the Division for consumer information and assistance.
(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.
(2) Misrepresent that repairs have been made to a motor vehicle.
(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.
(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.
(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.
(11) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Willfully depart from or disregard accepted practices and professional standards.
(13) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee

demonstrates that the customer could not reasonably have been notified.

(14) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(15) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S830-CSRH-002
SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE
THIS IS A DRAFT 21-JUN-99 21:01:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"**§ 20-354. Short title.**

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"**§ 20-354A. Scope and application.**

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.
b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agriculture or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars ($350.00).

(6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.

(7) When an insurer has authorized a motor vehicle repair shop to perform the repair and had agreed to pay the cost of the repair.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or

restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.
g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars ($350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"**§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.**

(a) Before proceeding with preparing an estimate the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.

(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article.

"**§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.**

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work

will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless the reassembled vehicle would be unsafe.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic works has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It shall be unlawful for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"§ 20-354F. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"§ 20-354G. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars ($350.00).

(2) The telephone number of the Consumer Protection Division of the Attorney General's Office for consumer information.

(3) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Unlawful acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.
(6) Fraudulently misuse any customer's credit card.
(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.
(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.
(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.
(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Section 2. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 830
Commerce Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99
Proposed House Committee Substitute S830-PCS7706-RN

Short Title: Auto Repair Work Disclosures. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"§ 20-354. Short title.

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"§ 20-354A. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

(1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.

(2) Any person who engages solely in the repair of any of the following:

a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.

b. For-hire vehicles which are rented for periods of 30 days or less.

(3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.

(4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

(5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars ($350.00).

(6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.

(7) When an insurer has authorized a motor vehicle repair shop to perform the repair and had agreed to pay the cost of the repair.

"**§ 20-354B. Definitions.**

As used in this act:

(1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.

(2) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.

(3) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(4) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.

(5) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:

a. Mobile motor vehicle repair shops.
b. Motor vehicle and recreational vehicle dealers.
c. Garages.
d. Service stations.
e. Self-employed individuals.
f. Truck stops.

g. Paint and body shops.
h. Brake, muffler, or transmission shops.
i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars ($350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate, the shop shall do both of the following:

(1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.
(2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It shall be unlawful for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price

estimate for the purpose of inducing the customer to waive his or her rights provided in this Article.

"§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost of the additional repair work:

(1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.

(2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).

(3) An implied partial waiver exists for diagnostic work, and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless the reassembled vehicle would be unsafe.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic work has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It shall be unlawful for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the

shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"**§ 20-354F. Invoice required of motor vehicle repair shop.**

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

(1) A statement indicating what was done to correct the problem or a description of the service provided.

(2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

(3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"**§ 20-354G. Required disclosure; signs; notice to customers.**

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

(1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars ($350.00).

(2) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"**§ 20-354H. Unlawful acts and practices.**

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

(1) Charge for repairs which have not been expressly or impliedly authorized by the customer.

(2) Misrepresent that repairs have been made to a motor vehicle.

(3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.

(4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.

(5) Fraudulently alter any customer contract, estimate, invoice, or other document.

(6) Fraudulently misuse any customer's credit card.

(7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.

(8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.

(9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.

(10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.

(11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.

(12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.

(13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article.

"**§ 20-354I. Remedies.**

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Section 2. This act becomes effective January 1, 2000.

SENATE BILL 830:
Auto Repair Work Disclosures

LL ANALYSIS

Committee:	House Judiciary II Committee	**Introduced by:**	Senator Miller
Date:	June 22, 1999	**Summary by:**	Robin Johnson & Steven Rose
Version:	S830-CSRH-002		Committee Counsel

SUMMARY: Senate Bill 830 would create the North Carolina Motor Vehicle Repair Act. The Act would require motor vehicle repair shops to adhere to the following concerning repairs and repair estimates:

- Unless waived by the customer in writing, the shop must prepare a written estimate, when the estimated cost of repair is more than $350, before doing any diagnostic work or repair. (The waiver can be for a period of time). The estimate must disclose any vehicle storage charges and that the customer can ask for replaced parts to be saved for inspection or return. A shop that does not agree to perform the repair work would not be required to do an estimate.
- Before preparing an estimate, a shop must (i) disclose to the customer the amount, if any, of the charge for doing the estimate and (ii) obtain authorization on the written estimate to prepare the estimate. The charge for an estimate cannot be excessive in relation to the work performed for the purpose of inducing the customer to waive his or her rights under the act. The shop cannot require the customer to waive his or her rights under this Act as a prerequisite for repairing the vehicle.

  The shop must promptly notify the customer of additional repair work and its cost if (i) the initial estimate was only for the diagnostic work and that work has been completed, (ii) the actual charges for repair work will exceed the estimate by more than 10%, or (iii) the diagnostic work has been completed on a vehicle that was dropped off at the shop during off hours or by someone other than the owner (implied partial waiver). Once notified, the customer can authorize, modify, or cancel the repair. If a customer cancels an authorized repair after it has begun because the repair cost will exceed the estimate, the shop must re-assemble the vehicle and may charge for the tear-down and the reassembly if the customer has been notified of these possible costs from the beginning.
- A shop cannot charge more than 10% over its estimate for repairs unless the customer has consented, nor can it keep the owner's vehicle (under a possessory lien) when the final cost is more than 10% over the estimate and the customer pays the amount of the estimate plus 10%.
- The shop must give the customer an invoice of the completed repair work, including an itemized list of parts, labor, and merchandise supplied and the costs thereof, and the use of replacement parts.
- The shop must conspicuously post a sign that discloses the customer's right to receive or waive a written estimate if the repair cost is over $350, the telephone number of the Attorney General's Consumer Protection Division for consumer information, and the customer's right to the return or inspection of parts that have been replaced. (The right to the return of parts does not apply if the shop has a warranty arrangement or exchange parts program with a manufacturer, distributor, or supplier – see 20-354E(e)).

It would be unlawful under this Act for a shop or its employees, among other things, to charge for unauthorized repairs, make certain misrepresentations, fraudulently alter an invoice or estimate or

misuse the customer's credit card, make misleading statements, make false promises to induce a customer to get his vehicle repaired. A person injured by a violation of this Act would be allowed to bring an action in court. The prevailing party may be entitled to the recovery of court costs and attorneys fees in addition to damages.

For purposes of this Act, a motor vehicle repair shop would include any person who repairs motor vehicles of another for compensation, mobile motor vehicle repair shops, motor vehicle dealers, garages, service stations, truck stops, paint and body shops, brake, muffler and transmission shops, glass work shops, and self-employed individuals that perform this work for compensation. However, the following would be exempt:

1. Government repair shops servicing their own vehicles
2. Persons servicing their own vehicles or for-hire vehicles that are rented for periods of 30 days or less
3. Persons repairing vehicles used principally in agriculture and only incidentally operated on the highways
4. Persons servicing vehicles solely for vehicle auctions
5. Sale and installation of tires.

This act would take effect when it becomes law.

This summary contributed to by Linwood Jones, Committee Counsel for Senate Commerce.

H830-SMRH-002

VISITOR REGISTRATION SHEET

Judiciary II — 6 July 1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Wilder + Crew	UNC-TV
Joseph Beech	DMJ ENF
[illegible]	NCSSA
Eddie Caldwell	HMcCC+C, P.A.
MRAD/REITER	NCRMA
ANDY EDLER	NCRMA
Deb Reid	DOT
Hester Leggett	DOT
Jan Pluser	AAA Carolinas
Phil Teeter	AGC
Martin Edens	Self-Help
Mark Benson	Capital Group
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Robert Graham	NCCADA