1999

HOUSE JUDICIARY I COMMITTEE

MINUTES

HOUSE JUDICIARY I COMMITTEE

1999-2000 SESSION

REPRESENTATIVE JOE HACKNEY
CHAIRMAN

REPRESENTATIVE MARTIN NESBITT
VICE-CHAIRMAN

EMILY REYNOLDS
COMMITTEE ASSISTANT

HOUSE JUDICIARY I COMMITTEE
1999-2000 Session



Representative Hackney
Chairman



Representative Nesbitt
Vice Chairman



Rep. Alexander



Rep. Blue



Rep. Boyd-McIntyre



Rep. Clary



Rep. Ellis



Rep. Gardner



Rep. Gray



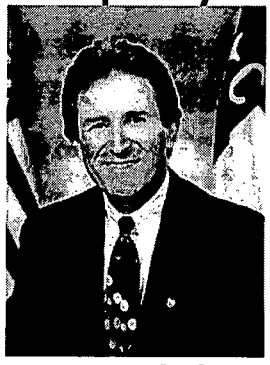
Rep. Insko



Rep. Miller



Rep. Moore



Rep. Redwine



Rep. Thompson

HOUSE JUDICIARY I COMMITTEE
1999-2000 Session
Membership

Name	Office #	Telephone	Legis. Assist.
Joe Hackney, Chairman	2207	733-5752	Emily Reynolds
Martin Nesbitt, Vice Chairman	2204	733-5956	Jan Lee
Martha Alexander	2121	733-7208	Ann Faust
Dan Blue	1227	715-2528	Lin Threatt
Flossie Boyd-McIntyre	507	733-5905	
Debbie Clary	1211	733-5654	Mary Jamison
Sam Ellis	607	733-5755	Allison Phillips
Charlotte Gardner	604	733-5802	Barbara Hocutt
Lyons Gray	533	733-5820	Cindy Brooks
Verla Insko	1323	733-5775	Pat Baker
George Miller	532	733-5995	Betty Angell
Richard Moore	1220	733-5746	Susan Burleson
David Redwine	635	733-5829	Nancy Brantley
Gregg Thompson	1002	733-5828	Edna Sykes

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	2/18	2/23	2/25	3/4	3/18	3/23	3/25	3/30	4/1	4/6	4/8	4/13	4/15	4/20 10:00 am	4/20 3:00 pm
Representative Hackney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Representative Nesbitt	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Alexander	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Representative Blue	✓			✓	✓		✓				✓	✓		✓	✓
Representative Boyd-McIntyre	✓	✓						✓			✓	✓			
Representative Clary	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Representative Ellis	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓
Representative Gardner	✓	✓	✓		✓	✓			✓		✓		✓	✓	
Representative Gray					✓				✓	✓					
Representative Insko	✓	✓		✓	✓	✓		✓	✓	✓		✓	✓	✓	
Representative Miller		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Representative Moore	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	
Representative Redwine	✓	✓	✓	✓	✓	✓									✓
Representative Thompson		✓		✓	✓		✓		✓	✓	✓	✓	✓	✓	
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-off.									✓						
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio															

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	AM 4/21	PM 4/21	4/22	4/23	4/26	AM 4/27	PM 4/27	5/4	5/6	5/11	5/13	5/18	5/20	5/25	5/27
Representative Hackney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Nesbitt	✓	✓	✓			✓	✓	✓		✓	✓		✓	✓	✓
Representative Alexander	✓				✓	✓	✓	✓	✓	✓	✓	✓		✓	
Representative Blue	✓										✓		✓	✓	✓
Representative Boyd-McIntyre				✓	✓										
Representative Clary	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			✓
Representative Ellis	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Gardner	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Representative Gray			✓		✓	✓	✓					✓			
Representative Insko	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	
Representative Miller			✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
Representative Moore	✓		✓			✓							✓	✓	
Representative Redwine				✓	✓										
Representative Thompson	✓		✓	✓				✓	✓	✓	✓	✓		✓	✓
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-off.				✓		✓	✓								
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio															

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	6/1	6/8	6/10	6/15	6/17	6/22	6/29	7/1	7/6	7/8	7/15				
Representative Hackney	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				
Representative Nesbitt	✓				✓	✓	✓	✓		✓					
Representative Alexander	✓	✓	✓	✓	✓	✓		✓		✓					
Representative Blue	✓		✓			✓		✓	✓	✓					
Representative Boyd-McIntyre		✓			✓	✓		✓							
Representative Clary		✓	✓	✓		✓	✓		✓	✓					
Representative Ellis	✓	✓	✓		✓	✓		✓		✓					
Representative Gardner		✓	✓	✓	✓		✓	✓	✓	✓	✓				
Representative Gray		✓	✓		✓			✓		✓	✓				
Representative Insko	✓	✓	✓	✓		✓	✓	✓	✓		✓				
Representative Miller	✓		✓			✓	✓		✓	✓	✓				
Representative Moore		✓	✓	✓	✓	✓			✓						
Representative Redwine	✓	✓	✓			✓		✓							
Representative Thompson	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓				
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-off.															
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio															

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY I Valid Through 2-NOV-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	02-16-99	02-24-99
H 41	BROWN	CARTWAY AMENDMENT	H -RE-REF COM ON JUDICI	02-16-99	
H 57=	ALEXANDER	MOTOR VEHICLE OCCUPANT RESTRAINTS	*H -RE-REF COM ON JUDICI	03-22-99	04-05-99
H 57=	ALEXANDER	MOTOR VEHICLE OCCUPANT RESTRAINTS	*H -RE-REF COM ON JUDICI	04-08-99	
H 111=	SUTTON	TRAFFIC ENFORCEMENT STATISTICS	H -REF TO COM ON JUDICI	02-18-99	
H 198=	NESBITT	ADULT CARE HOME LICENSURE	H -REF TO COM ON JUDICI	03-01-99	
H 199=	HACKNEY	SAFE FAMILIES ACT	H -REF TO COM ON JUDICI	03-01-99	
H 247	WAINWRIGHT	FUNERAL PROCESSIONS	*R -CH. SL 99-0441	04-05-99	04-07-99
H 298	HACKNEY	STUDY CONDITIONAL RELEASE	*H -RE-REF COM ON RULES	04-15-99	06-15-99
H 316=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*R -CH. SL 99-0121	03-24-99	04-23-99
H 494	HACKNEY	UNIFORM CHILD-CUSTODY ACT	*R -CH. SL 99-0223	03-18-99	04-19-99
H 495	HACKNEY	FAMILY LAW ARBITRATION ACT	*R -CH. SL 99-0185	03-18-99	04-12-99
H 517=	MOORE R	STOP THREATS/ACTS OF SCHOOL VIOLENCE	*R -CH. SL 99-0257	05-26-99	
H 660	NESBITT	COLLECTION AGENCY DEFINITION	R -CH. SL 99-0419	03-29-99	04-06-99
H 661	NESBITT	JUVENILE COMMUNITY SERVICE	*R -CH. SL 99-0444	03-29-99	04-06-99
H 853=	HACKNEY	STRUCTURED SETTLEMENT PROTECTION ACT	H -REF TO COM ON JUDICI	04-01-99	
H 884=	LUEBKE	MATTHEW SHEPARD MEMORIAL ACT	*HF-FAILED 2ND READING	04-01-99	04-21-99
H 920	STARNES	VEHICULAR INJURY TO PREGNANT WOMAN	H -REF TO COM ON JUDICI	04-05-99	
H 924=	NESBITT	MEDIATION SETTLEMENT IN WRITING	*R -CH. SL 99-0354	04-05-99	04-19-99
H 956=	CREECH	PERMANENT REVOCATION HEARING	HF-FAILED 3RD READING	04-08-99	04-23-99
H1022	ALLEN	UNLAWFUL USE OF DRIVERS LICENSE	*R -CH. SL 99-0299	04-14-99	04-23-99
H1030	HACKNEY	TRAILER AMENDMENTS	*R -CH. SL 99-0281	04-14-99	04-21-99
H1048	MILLER G	AMEND RULE 4/MANNER OF SERVICE	*S -REF TO COM ON JUDICI	04-14-99	04-27-99
H1050	REDWINE	DRUG OFFENDER/REQUIRE ACTIVE TIME	H -REF TO COM ON JUDICI	04-14-99	
H1056=	MILLER G	LIMITATION FOR PROD. LIABILITY ACTIO	H -REF TO COM ON JUDICI	04-15-99	
H1066	DECKER	BAN PARTIAL-BIRTH ABORTIONS - 2	H -REF TO COM ON JUDICI	04-15-99	
H1070	ALEXANDER	MARRIAGE LICENSE CHANGE - 2	H -REF TO COM ON JUDICI	04-15-99	
H1107	GARDNER	CREDIT CARD SOLICITATION/COLLEGES	*S -REF TO COM ON ED/HIED	04-23-99	04-28-99
H1130	TOLSON	LIMIT Y2K LIABILITY	H -REF TO COM ON JUDICI	04-15-99	
H1131=	WALEND	RAISE STATE TORT CLAIMS CAP	*H -RE-REF COM ON APPROP	04-15-99	05-31-99

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 I Valid Through 2-NOV-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1133	HACKNEY	HEALTH INS./LIABILITY	*S -HELD AS FILED	04-15-99	04-23-99
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	04-15-99	04-22-99
H1157	NESBITT	INCREASE SMALL CLAIMS AMOUNT	H -REF TO COM ON JUDICI	04-15-99	
H1169	THOMPSON	SUCCESSION TECHNICAL AMENDMENTS	*S -REF TO COM ON JUDICI	04-15-99	04-22-99
H1194	NESBITT	NEED CONSENT TO TAPE CONVERSATION	H -REF TO COM ON JUDICI	04-15-99	
H1200=	MILLER G	JOURNALISTS' TESTIMONIAL PRIVILEGE	*S -REF TO COM ON JUDICI	04-15-99	04-27-99
H1231	KINNEY	SAFE STORAGE OF FIREARMS	H -REF TO COM ON JUDICI	04-15-99	
H1238	NESBITT	CONDEMNATION LAW MODIFIED	H -REF TO COM ON JUDICI	04-15-99	
H1245	CLARY	3RD DEGREE SEX OFFENSE	*S -REF TO COM ON JUDICII	04-15-99	04-27-99
H1248	HACKNEY	G.S. 14-190.9 CONST. CONFORMITY	H -REF TO COM ON JUDICI	04-15-99	
S 34=	COCHRANE	EMER SHELTER/HEALTH FACIL.RULES WAIV	*R -CH. SL 99-0307	04-28-99	06-29-99
S 65=	PURCELL	MOTOR VEHICLE OCCUPANT RESTRAINTS	*R -CH. SL 99-0183	04-22-99	05-18-99
S 76=	BALLANCE	TRAFFIC ENFORCEMENT STATISTICS	*R -CH. SL 99-0026	03-11-99	03-31-99
S 120	ALLRAN	UP SOME UNDERAGE SALES PENALTIES	R -CH. SL 99-0433	05-03-99	06-29-99
S 170	CARPENTER R	RESTRUCTURE CIVIL CONTEMPT	*R -CH. SL 99-0361	04-22-99	07-08-99
S 197=	COOPER	SAFE FAMILIES ACT	*R -CH. SL 99-0023	03-15-99	03-22-99
S 247	LEE	SOUTHEAST COMPACT COMMISSION	R -CH. SL 99-0357	04-27-99	07-15-99
S 288	REEVES	UNSOLICITED COMM. ELEC. BULK MAIL	*R -CH. SL 99-0212	04-28-99	06-01-99
S 297	CLODFELTER	LTD. PTRNERSP/PROF. LIABILITY CHANGE	*R -CH. SL 99-0362	04-27-99	06-16-99
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*H -REF TO COM ON RULES	04-05-99	07-14-99
S 426	CLODFELTER	DISSENTERS' RIGHTS AMENDMENTS	R -CH. SL 99-0141	04-22-99	05-13-99
S 746=	COOPER	STRUCTURED SETTLEMENT PROTECTION ACT	*R -CH. SL 99-0367	04-27-99	07-01-99
S 774	CLODFELTER	ELECTRONIC PROXIES FOR NONPROFITS	*R -CH. SL 99-0139	04-22-99	05-13-99
S 775	CLODFELTER	ALLOW ELECTRONIC/TELEPHONIC PROXIES	*R -CH. SL 99-0138	04-22-99	05-13-99
S 835	CLODFELTER	REVISE LAW GOVERNING MERGERS	*R -CH. SL 99-0369	04-28-99	06-30-99
S 867	GULLEY W	REAL ESTATE LICENSURE LAW CHANGES	*R -CH. SL 99-0229	04-29-99	05-26-99
S 888	COOPER	DRUG LAW AMENDMENTS	*R -CH. SL 99-0370	04-28-99	07-07-99
S 929	REEVES	ABATEMENT OF NUISANCES	*R -CH. SL 99-0371	05-03-99	07-07-99
S 995	ODOM	POLICE PEER COUNSELOR PRIVILEGE	*R -CH. SL 99-0374	04-28-99	07-07-99
S1009=	HOYLE	JOURNALISTS' TESTIMONIAL PRIVILEGE	*R -CH. SL 99-0267	04-27-99	06-14-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY I Valid Through 2-NOV-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1021	CLODFELTER	COMPUTERIZED EVIDENCE AMENDMENTS	R -CH. SL 99-0131	04-29-99	05-13-99
S1074	REEVES	YEAR 2000 CONSUMER PROTECTION ACT	*R -CH. SL 99-0308	04-28-99	06-16-99
S1113	KERR	WORKERS' COMP/MED. PROVIDER CONTACT	*R -CH. SL 99-0150	04-29-99	05-25-99

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HOUSE JUDICIARY I COMMITTEE
1999-2000 SESSION

INDEX OF LEGISLATION COVERED DURING EACH MEETING

February 18, 1999	House Bill 19 – Casino Boats Regulated
February 23, 1999	House Bill 19 – Casino Boats Regulated
February 25, 1999	House Bill 41 – Cartway Amendments
March 4, 1999	House Bill 199 – Safe Families Act
March 18, 1999	Senate Bill 197 – Safe Families Act
March 23, 1999	House Bill 495 – Family Law Arbitration Act
March 25, 1999	Senate Bill 76 – Traffic Enforcement Statistics
March 30, 1999	Senate Bill 76 – Traffic Enforcement Statistics
April 1, 1999	House Bill 57 – Motor Vehicle Occupant Restraints
April 6, 1999	House Bill 660 – Collection Agency Definition House Bill 661 – Juvenile Community Service House Bill 495 – Family Law Arbitration
April 8, 1999	House Bill 494 – Uniform Child-Custody Act House Bill 495 – Family Law Arbitration Act
April 13, 1999	House Bill 316 – Prescribed Burning in Forests House Bill 494 – Uniform Child-Custody Act
April 15, 1999	House Bill 494 – Uniform Child-Custody Act House Bill 924 – Community Mediation Centers
April 20, 1999 AM meeting	House Bill 1030 – Trailer Amendments House Bill 1048 – Amend Rule 4/Manner of Service House Bill 884 - Matthew Shepard Memorial Act
April 20, 1999 PM meeting	House Bill 1135 – 1999 Governor's DWI Amendments
April 21, 1999 12:00 Noon	House Bill 1135 – 1999 Governor's DWI Amendments House Bill 956 - Permanent Revocation Hearing House Bill 1169 - Succession Amendments House Bill 1133 - Health Insurance/Liability

April 21, 1999 PM meeting	House Bill 1157 – Increase Small Claims Amount House Bill 1133 – Health Insurance/Liability
April 22, 1999	House Bill 316 – Prescribed Burning in Forests House Bill 1133 – Health Insurance/Liability House Bill 1022 – Unlawful Use of Drivers' License House Bill 1169 – Succession Amendments House Bill 1130 - Limit Y2K Liability House Bill 1131 - Raise State Tort Claims CAP House Bill 1157 – Increase Small Claims Amount
April 23, 1999	House Bill 1245 - 3rd Degree Sex Offense House Bill 1131 – Raise State Tort Claims CAP House Bill 1248 - G.S. 14-190.9 House Bill 1200 - Journalists' Testimonial Privilege
April 26, 1999	House Bill 1200 - Journalists' Testimonial Privilege House Bill 1048 - Amend Rule 4/Manner of Service House Bill 1056 - Limitation for Product Liability Action
April 27, 1999 AM meeting	House Bill 1245 - 3rd Degree Sex Offense House Bill 1231 - Safe Storage of Firearms House Bill 1194 - Need Consent to Tape Conversation House Bill 1048 - Amend Rule 4/Manner of Service
April 27, 1999	House Bill 1107 - Parent Consent/College Credit Card House Bill 920 - Vehicular Injury to Pregnant Woman House Bill 1238 - Condemnation Law Modified House Bill 1056 - Limitation for Product Liability Action House Bill 1231 - Safe Storage of Firearms
May 4, 1999	House Bill 1238 - Condemnation Law Modified
May 6, 1999	Senate Bill 170 - Restructure Civil Contempt House Bill 1238 - Condemnation Law Modified
May 11, 1999	Senate Bill 288 - Unsolicited Commercial Electronic Bulk Mail Senate Bill 297 - Limited Partnership Changes
May 13, 1999	Senate Bill 426 - Dissenters' Rights Amendments Senate Bill 774 - Electronic Proxies for Nonprofits Senate Bill 775 - Allow Electronic/Telephonic Proxies Senate Bill 1021 - Computerized Evidence Amendments House Bill 1238 - Condemnation Law Modified
May 18, 1999	Senate Bill 65 - Motor Vehicle Occupant Restraints Senate Bill 1009 –Journalists' Testimonial Privilege
May 20, 1999	Senate Bill 746 - Structured Settlement Protection Act
May 25, 1999	Senate Bill 867 - Real Estate Licensure Law Changes Senate Bill 1113- Workers' Compen./Med. Provider Contact

May 27, 1999	House Bill 1131 – Raise state Tort Claims CAP Senate Bill 888 - Drug Law Amendments
June 1, 1999	Senate Bill 288 - Unsolicited Electronic Bulk Mail Senate Bill 34 - Emergency Shelter/Health Facility Immunity
June 8, 1999	House Bill 517 - Stop Threats/Acts of School Violence
June 10, 1999	Senate Bill 746 - Structured Settlement Protection Act Senate Bill 1009- Journalists' Testimonial Privilege
June 15, 1999	House Bill 298 - Inpatient Commit./Conditional Release Senate Bill 297 - Limited Partnership Law Changes Senate Bill 1074- Year 2000 Consumer Protection Act Senate Bill 888 - Drug Law Amendments
June 17, 1999	Senate Bill 746 – Structured Settlement Protection Act
June 22, 1999	Senate Bill 888 – Drug Law Amendments Senate Bill 34 - Emergency Shelter/Health Facility Immunity
June 29, 1999	Senate Bill 120 - Underage Sales Penalties Senate Bill 835 - Revise Merger Law Senate Bill 34 - Emergency Shelter/Health Facility Immunity
July 1, 1999	Senate Bill 746 – Structured Settlement Protection Act
July 6, 1999	Senate Bill 888 - Drug Law Amendments Senate Bill 929 - Abatement of Nuisances Senate Bill 995 - Police Peer Counselor Privilege
July 8, 1999	Senate Bill 170 - Restructure Civil Contempt Senate Bill 393 - Written Motions/Supporting Briefs
July 13, 1999	Senate Bill 393 - Written Motions/Supporting Briefs

HOUSE JUDICIARY I COMMITTEE

1999-2000 SESSION

MINUTES

February 18, 1999 – April 13, 1999

HOUSE JUDICIARY I COMMITTEE

February 18, 1999

Agenda

House Bill 19 – Casino Boats Regulated
Representative Redwine

HOUSE JUDICIARY I COMMITTEE
February 18, 1999
Minutes

The House Judiciary I Committee held its first meeting of the 1999-2000 session on Thursday, February 18, 1999 at 10:00 a. m., in Room 1228/1327 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney. Members of the Judiciary I Committee are: Representatives Joe Hackney, Martin Nesbitt, Vice Chairman, Alexander, Blue, Boyd-Mcintyre, Clary, Ellis, Gardner, Gray, Insko, Miller, Moore, Redwine and Thompson, (Attachment I). The members present for the first meeting were: Representatives Hackney, Nesbitt, Alexander, Blue, Boyd-McIntyre, Clary, Ellis, Gardner, Insko, Moore, and Redwine. Visitors are noted on the visitor registration sheet, (Attachment II).

Chairman Hackney introduced Emily Reynolds, Committee Assistant, and Susan Hayes and Linwood Jones, who will serve as Staff Attorneys to the committee. Each member of the committee introduced themselves, speaking briefly about their backgrounds. Chairman Hackney stated that in the course of the Judiciary I committee, every point of view of the members would be heard regarding any legislation before the committee, and he invited those persons outside of the committee to make their views known.

Representative Hackney recognized Representative David Redwine to explain **House Bill 19, AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS,** (Attachment III). Representative Redwine stated that casino boats have operated for several years in the State of Florida, along the Gulf coast, and along the Mississippi River. He said that a casino boat operation had recently located in Little River, South Carolina which is adjacent to his district, and that the State of South Carolina is currently considering a bill to ban casino boats. Representative Redwine said that the company that leases dock space in Florida and Little River has been looking for dock space in and around his district. He noted that the operation of casino boats is not in keeping with the character of his district's family-oriented tourist communities. He said that House Bill 19 is an attempt to get North Carolina "ahead of the curve" in banning what can be banned and regulating what cannot be banned, based upon Federal law known as the Johnson Act. He stated that the Johnson Act states that a boat making an intervening stop in another state cannot be regulated by state law, and that "intervening stops" are not defined in federal law.

Representative Redwine explained "Voyages to Nowhere," stating that these are a trips made by casino boats which leave a port, travel three miles out, gamble in federal waters, and return to port without making an "intervening stop." He said that the courts have stated that operations such as this may be banned by states. House Bill 19 attempts to ban "Voyages to Nowhere." The legislation defines intervening stops and sets forth regulations for any casino boat that may meet the intervening stop requirements. The bill would require a $10,000 permit for gambling boats, and a privilege tax of $6 per person.

An explanation of the bill is outlined in a memorandum prepared by Ms. Susan Hayes, Committee Counsel, (Attachment IV). Ms. Hayes was recognized to comment on the bill. She noted that states are restricted by the Johnson Act with regard to what can and cannot be done to regulate, and that this bill is an attempt to set reasonable and basic regulations.

Chairman Hackney recognized Representative Ellis who asked what was wrong with having such operations as casino boats.

Representative Redwine said that allowing casino boats to make "voyages to nowhere" along North Carolina's coast could harm the family tourism reputation that the state has tried to develop and that they are out of character with the family tourist community that his district prides itself as being.

Representative Ellis stated that he could see no difference between a bus filled with people who travel to Atlantic City to gamble and a boat that leaves a North Carolina dock and goes outside the three-mile territorial waters to gamble.

Representative Redwine responded that the difference is that in the bus situation one does not see signs, etc. promoting the gambling activity and that the gambling facility is not visible. The casino boats would be visible and would detract from the communities' character.

Representative Blue had questions regarding the regulation of boats when the point of origin is not North Carolina. Ms. Hayes replied that the bill does not regulate those boats, but noted that alcohol permits must be obtained from the state by those boats.

Representative Gardner asked for clarification on the pending South Carolina legislation.

Representative Redwine stated that a bill to ban casino boats has passed the House and is currently being debated in the Senate.

Representative Clary questioned possible problems of dealing with the seizure and storage provision of the bill.

Chairman Hackney asked if it was the Committee's desire to proceed with the bill. The Committee agreed to continue working with the bill

Chairman Hackney stated that opportunity would be given for input from interested parties outside the committee to be heard on House Bill 19.

Mr. John Rustin, North Carolina Family Policy Council was recognized. Mr. Rustin stated that the Council was supportive of the bill. He noted concern with regard to the inter-twining of this legislation and federal law. He suggested that a portion of the revenue derived from the bill be transferred to the Department of Social Services to deal with compulsive gambling. He also suggested that the Wildlife Commission and other enforcement entities working around the waters of the state be given the ability to regulate the operations of casino boats that might meet the intervening stop requirement.

Chairman Hackney stated that the bill would be discussed further at the next meeting of the Committee. The meeting was adjourned at 10:50 a. m.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

HOUSE JUDICIARY I COMMITTEE
1999-2000 Session



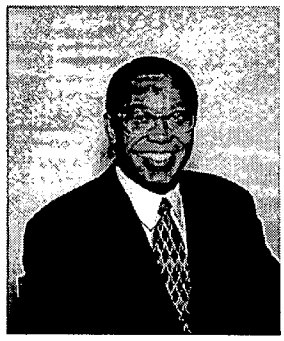
Representative Hackney
Chairman



Representative Nesbitt
Vice Chairman



Rep. Alexander



Rep. Blue



Rep. Boyd-McIntyre



Rep. Clary



Rep. Ellis



Rep. Gardner



Rep. Gray



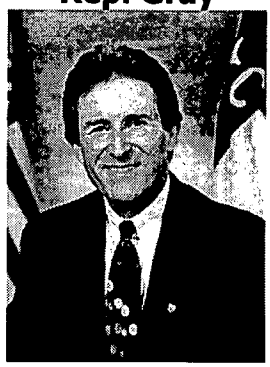
Rep. Insko



Rep. Miller



Rep. Moore



Rep. Redwine



Rep. Thompson

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — Name of Committee

February 18, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	Sentencing Commission
Jay Hare	DOR
Lonnie Collins	DOR
Kelli Kukura	DuPont
John Rustin	NCFPC
Tommy Fullbright	Manton & Wms.
Mark Mason	The Capital Group
Becki Dyer	PPAB
Bernard Allen	SOS
[illegible]	AOC
Walter Price	Charlotte Chamber
Mary Carmilia	Mecklenburg County
Jude Cozort	GTECH
Willie Riddick	DOR
Mark Crosser	NCATL
Jonathan Williams	CCPS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 19

Short Title: Casino Boats Regulated. (Public)

Sponsors: Representatives Redwine; Barefoot, Cole, Culp, Decker, Edwards, Goodwin, Hill, Hurley, Luebke, McComas, Smith, Thompson, and C. Wilson.

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

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

Whereas, North Carolina has a long history of outlawing gambling within the State; with gambling being illegal since 1891, allowing gambling in houses of public entertainment being illegal since 1799, and the possession of gambling devices outlawed in this State since 1791; and

Whereas, casino boats have started "gambling cruise to nowhere" operations in several states along the Atlantic Ocean, in an attempt to avoid the application of similar laws prohibiting gambling and the possession of gambling devices, with passengers embarking at ports within the State, passing beyond the three-mile State criminal jurisdictional limit where the gambling and use of the gambling devices actually take place, and then returning to the same port within the State where the passengers disembark; and

Whereas, the federal government has preempted regulation of the possession of gambling devices on certain casino boats that leave a port in one state, make at least one intervening stop in a second state, and then return to the same or

another port in the first state as specified in 15 U.S.C. 1175(b)(2), commonly referred to as the Johnson Act Amendments of 1992; and

Whereas, it is the intent of the General Assembly to prohibit "gambling cruises to nowhere" in this State and to regulate, to the extent possible under federal law, all gambling cruises that originate and terminate in this State; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 3. Casino Boats.

"**§ 14-309.20. Short title.**

This Part may be referred to as the 'Gambling Cruise Prohibition and Regulation Act.'

"**§ 14-309.21. Casino boats and gambling devices; prohibited.**

(a) It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any slot machine, gaming table, illegal punchboard, or gambling device as defined in this Article or 15 U.S.C. 1171 on any vessel, boat, ship, watercraft, or barge that embarks from any point within this State and disembarks at the same or another point within this State without making an intervening stop within the boundaries of another state, possession of the United States, or a foreign country.

For purposes of this subsection an 'intervening stop' shall be when a vessel, boat, ship, watercraft, or barge does all of the following:

(1) Docks at a port.

(2) Remains continuously at that port for at least six hours.

(3) Allows passengers to disembark the vessel for sightseeing, shopping, or other similar tourism-related acts at that port.

(b) It shall be unlawful to manage, supervise, control, operate, or own any vessel or craft during which time the person intentionally causes or knowingly permits a violation of subsection (a) of this section.

(c) It shall be unlawful to solicit, entice, induce, persuade, or procure, or to aid in soliciting, enticing, inducing, persuading, or procuring any person to visit or embark on any vessel, boat, ship, watercraft, or barge for any purpose that constitutes a violation of this Article.

(d) This section shall not apply to possession or transportation of slot machines, gaming tables, illegal punchboards, or gambling devices on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the first point of entry into North Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from North Carolina waters, provided that nothing herein shall preclude prosecution for any other offense under this Article.

"**§ 14-309.22. Penalty for violation.**

(a) A person who violates G.S. 14-309.21 shall be guilty of a Class A1 misdemeanor and shall be fined up to five thousand dollars ($5,000) and imprisoned in the discretion of the court.

(b) Alcohol law enforcement officers and any law enforcement officer with subject matter and territorial jurisdiction, who have probable cause to believe any slot machine, gaming table, illegal punchboard, or gambling device is being manufactured, reconditioned, repaired, sold, transported, possessed, or used in violation of G.S. 12-309.21, may take any of the following actions:

(1) Seize the slot machine, gaming table, illegal punchboard, or gambling device.

(2) Seize any monies, other property, or thing of value used in conjunction with or derived from the unlawful use of such illegal device.

(3) Seize any vessel, boat, ship, watercraft, or barge upon which an illegal slot machine, gaming table, illegal punchboard, or other gambling device is found.

(c) Upon conviction, a court of competent jurisdiction shall enter an order directing the seizure, forfeiture, and sale of any vessel, boat, ship, watercraft, or barge along with all of its gear, engines, tackle, and all other nautical, navigation, and safety equipment, furniture and personal property of any description. Any means of conveyance to and from an illegally used vessel, boat, ship, watercraft, or barge shall also be ordered seized, forfeited, and sold. The proceeds of a sale pursuant to this subsection shall be applied, in order, to the costs of seizure, storage, and sale, with the balance paid to the school fund in the county in which the property is seized.

"**§ 14-309.23. Authority of division of alcohol law enforcement officers.**

(a) Authority. -- In the case of any tour boat or vessel, boat, ship, watercraft, or barge possessing an alcoholic beverage permit pursuant to Chapter 18B of the General Statutes, alcohol law enforcement agents shall, at any time it reasonably appears that someone is on board, have authority to board and investigate the operation of the craft to ensure compliance with the provisions of the ABC law and this Article to include viewing the entire premises, and examining any books, logs, and records of the permittee.

(b) Interference with inspection. -- Refusal by a permittee or by any employee of a permittee to permit an agent to board to make an inspection authorized by subsection (a) of this section shall be cause for revocation, suspension, or other action against the permit of the permittee as provided in G.S. 18B-104.

(c) It shall be a Class 2 misdemeanor for any person to resist or obstruct an agent attempting to make a lawful inspection under this section.

"**§ 14-309.24. Regulation of casino boats operating pursuant to federal law.**

(a) The operator of any vessel, boat, ship, watercraft, or barge, the operation of which would be illegal in this State except for the exclusions provided in 15 U.S.C. 1175(b)(2), shall comply with all of the following:

(1) The operator shall comply with the applicable provisions of Chapter 105 of the General Statutes including paying a privilege tax in accordance with G.S. 105-40.1 and withholding and reporting gambling winnings in accordance with G.S. 105-163.3A.

(2) If alcoholic beverages are to be sold to the passengers, the operator shall obtain a 'casino boat' permit as provided for in G.S. 18B-1006(n).

(3) The operator shall, while operating the vessel within North Carolina waters, comply with the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters."

Section 2. G.S. 18B-1006 is amended by adding a new subsection:

"(n) Casino boats. -- The Commission may issue a 'casino boat' permit to a boat that is operated pursuant to G.S. 14-309.24 if the boat meets all of the following conditions:

(1) The boat shall serve meals on each voyage and shall have a dining area with seating for at least 36 people.

(2) The boat's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(3) A boat holding a 'casino boat' permit may also hold the permits listed in G.S. 18B-1001(1), (3), (5), and (10), but no off-premises sales may be made pursuant to those permits.

(4) A boat shall have a home port in an area where issuance of all of the permits listed in subdivision (3) of this subsection are legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid only during voyages that leave and return to the boat's home port, and apply only if the boat docks in areas within this State where sales are legal, except in an emergency.

(5) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(6) The permit fees are paid for the applicable permits listed in subdivision (3) of this section and for a 'casino boat' permit.

(7) The requirements of all other applicable provisions of this Chapter are met."

Section 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $400.00.
(2) Off-premises malt beverage permit -- $400.00.
(3) On-premises unfortified wine permit -- $400.00.
(4) Off-premises unfortified wine permit -- $400.00.
(5) On-premises fortified wine permit -- $400.00.
(6) Off-premises fortified wine permit -- $400.00.
(7) Brown-bagging permit -- $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.

(8) Special occasion permit -- $400.00.
(9) Limited special occasion permit -- $50.00.
(10) Mixed beverages permit -- $1,000.
(11) Culinary permit -- $200.00.
(12) Unfortified winery permit -- $300.00.
(13) Fortified winery permit -- $300.00.
(14) Limited winery permit -- $300.00.
(15) Brewery permit -- $300.00.
(16) Distillery permit -- $300.00.
(17) Fuel alcohol permit -- $100.00.
(18) Wine importer permit -- $300.00.
(19) Wine wholesaler permit -- $300.00.
(20) Malt beverage importer permit -- $300.00.
(21) Malt beverage wholesaler permit -- $300.00.
(22) Bottler permit -- $300.00.
(23) Salesman permit -- $100.00.
(24) Vendor representative permit -- $50.00.
(25) Nonresident malt beverage vendor permit -- $100.00.
(26) Nonresident wine vendor permit -- $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $50.00.
(28) Winery special event permit -- $200.00.
(29) Mixed beverages catering permit -- $200.00.
(30) Guest room cabinet permit -- $1,000.
(31) Liquor importer/bottler permit -- $500.00.
(32) Cider and vinegar manufacturer permit -- $200.00.
(33) Brew on premises permit -- $400.00.
(34) Casino boat permit -- $10,000."

Section 4. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(4) Gambling boat voyage. -- A voyage of a commercial vessel transporting passengers engaged in gambling aboard the vessel, during which passengers embark in this State and disembark only in this State or a contiguous state."

Section 5. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-40.1. Gambling boat voyages.**

A person engaged in the business of operating gambling boat voyages must pay a tax on the business at the rate of six dollars ($6.00) for each passenger who embarks on a gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer must report to the Secretary the number of passengers who embarked on the taxpayer's gambling boat voyages during the previous month and must pay the tax at the time the report is due."

Section 6. G.S. 105-163.1 is amended by adding a new subdivision to read:

"(5a) Gambling boat operator. -- A person engaged in the business of operating gambling boat voyages."

Section 7. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a gambling boat operator, or a payer."

Section 8. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Gambling boat operators must withhold taxes.**

(a) Requirement. -- Every gambling boat operator who pays a resident of this State more than six hundred dollars ($600.00) in gambling winnings during a gambling boat voyage must deduct and withhold from the winnings paid to the resident the State income taxes due on the winnings as provided in this section. The amount of taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat operator withholds are held in trust for the Secretary.

(b) Returns; due date. -- A gambling boat operator must file a return with the Secretary on a form prepared by the Secretary and must provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the gambling boat operator pays gambling winnings to a resident of this State. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(c) Annual statement. -- A gambling boat operator required to deduct and withhold from a resident's gambling winnings under this section must furnish to the resident duplicate copies of a written information statement. The statement is due by January 31 following the calendar year and must show the following:

(1) The gambling boat operator's name, address, and taxpayer identification number.

(2) The resident's name, address, and taxpayer identification number.

(3) The total amount of gambling winnings paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

(5) Any other information required by the Secretary.

(d) Report to Secretary. -- Each gambling boat operator must file with the Secretary an annual report that compiles the information contained in each of the operator's statements to residents and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that he or she is not a resident of this State. The operator must retain this information with its records."

Section 9. G.S. 105-163.9 reads as rewritten:

"**§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the ~~wages~~ wages, winnings, or compensation of the agent's ~~employees~~ employees, passengers, or contractors. A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266."

Section 10. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the ~~wages~~ wages, winnings, or compensation of an individual ~~shall be~~ is allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. ~~105-163.3 or G.S.~~ 105-163.3, 105-163.3A, or 105-163.7 and any other information the Secretary requires."

Section 11. This act is effective when it becomes law. Sections 4 through 10 of this act become effective on the first day of the third calendar month after this act becomes law.

ATTACHMENT IV

North Carolina General Assembly
Legislative Services Office

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

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

Gerry F. Cohen, Director
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Raleigh, NC 27603-5925
(919) 733-2578

February 18, 1999

TO: Representative Joe Hackney, Chairman
House Judiciary I Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB 19 – Casino Boats Regulated

House Bill 19 amends the General Statutes to prohibit and regulate casino boats as permissible by federal law. The federal Johnson Act limits state regulation of gambling on boats to those boats NOT in interstate commerce.

Section 1 creates a new Part 3 of Article 37 of Chapter 14 of the General Statutes entitled the "Gambling Cruise Prohibition and Regulation Act" as follows:

G.S. 14-309.20 is the short title of the Act.

G.S. 14-309.21 prohibits the manufacture, reconditioning, repair, sale, transportation, possession or use of any gambling device on any boat, etc. that leaves from a port in North Carolina and returns to the same or another point in North Carolina without making an "intervening stop" in another state. "Intervening stop" requires that the boat dock at a port in another state, remain at that port for at least 6 hours, and allow passengers to disembark for tourism-related acts at that port.

G.S. 14-309.22 provides for a Class A1 misdemeanor and a fine of up to $5,000 for violation of the casino boat prohibition. This statute also provides for the seizure and destruction of any gambling device, any monies or property derived from the use of a gambling device, or any boat containing a gambling device.

G.S. 14-309.23 grants alcohol law enforcement (ALE) officers authority to board at any time it reasonably appears someone is onboard, any boat possessing an alcoholic beverage permit. It is a Class 2 misdemeanor for any person to resist or obstruct an agent attempting to make a lawful inspection under this section.

G.S. 14-309.24 regulates casino boats that leave and return to North Carolina, but make the required "intervening stop". These regulations include:

1) Payment of a privilege tax and the withholding and reporting of gambling winnings.
2) If alcoholic beverages are to be sold, a "casino boat" permit must be purchased in addition to any other required permits under the alcohol enforcement laws.
3) Compliance with the "Safety of Life as Sea" (SOLAS) standards and requirements.

Section 2 adds a new subsection (n) to G.S. 18B-1006 which creates a "casino boat" permit under the alcohol control laws. In order to receive a casino boat permit, and any other permits required to serve alcohol, the boat must meet all of the following requirements:

1) Serve meals on each voyage and have a seated dining capacity of at least 36 people.
2) Have higher gross receipts for food and non-alcoholic beverages than for alcoholic beverages.
3) Have a home port in which issuance of all obtained permits is legal, and alcohol permits are only valid during voyages that leave and return to the boat's home port.
4) Liquor purchased for resale in mixed beverages may only be purchased from the local board for the jurisdiction of the boat's home port.

Section 3 amends G.S. 18B-902(d) to provide a one time $10,000 fee for a "casino boat" permit.

Section 4 adds a new subdivision (4) to G.S. 105-228.90(b) to define "Gambling boat voyage" for tax purposes.

Section 5 creates a new G.S. 105-40.1 which provides for a $6.00 per passenger privilege tax.

Section 6 amends G.S. 105-163.1 to define "Gambling boat operator" for income tax withholding purposes.

Section 7 amends G.S. 105-163.1 to provide that a gambling boat operator is a withholding agent for income tax purposes.

Section 8 creates a new G.S. 105-163.3A which requires gambling boat operators to withhold taxes from and report winning of $600.00 or more paid to any resident of North Carolina.

Sections 9 and 10 make conforming changes to G.S. 105-163.9 and 105-163.10.

Section 11 makes this Act effective when it becomes law, except that Sections 4 through 10, relating to tax provisions become law on the first day of the third calendar month after this act becomes law.

HOUSE JUDICIARY I COMMITTEE

February 23, 1999

Agenda

House Bill 19 – Casino Boats Regulated
Representative Redwine

HOUSE JUDICIARY I COMMITTEE
February 23, 1999
Minutes

The House Judiciary I Committee met on Tuesday, February 23, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Clary, Ellis, Gardner, Insko, Miller, Redwine and Thompson. The visitors registration sheet indicates visitors present, (Attachment I).

The Chairman stated that the committee would continue with the discussion of **House Bill 19, AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS,** (Attachment II), and recognized Representative Redwine.

Representative Redwine stated that the bill was discussed at the previous meeting of the Judiciary I committee (see February 18, 1999 minutes) and that he had several technical amendments to offer. He sent forth the first amendment (Attachment III).

Ms. Susan Hayes, Committee Counsel, stated that the amendment added a new subsection to clarify that nothing in the previous sections would prohibit prosecution under the existing laws for possessing gambling devices. She noted that this provision was in the bill, but that the new subsection was added to expressly state that existing gambling laws do still apply.

Representative Redwine moved adoption of the amendment. The amendment was adopted.

Representative Redwine offered a second amendment, (Attachment IV). Ms. Hayes explained the amendment. Representative Redwine stated that the intent of the amendment was to allow the bill to follow the guidelines of structured sentencing that are already in place. He moved adoption of the amendment. The amendment was adopted.

Representative Redwine offered another amendment, (Attachment V). Ms. Hayes explained that the amendment was requested by the ABC Commission and would allow ABC auditors to examine the books, logs, and records of the permittees.

Committee discussion followed. Representative Gardner asked how the ABC Commission, not having boats, would be able to enforce this provision.

Ms. Ann Fulton, ABC Commission, stated that the Commission's auditors would be enforcing food sales and alcohol sales ratio requirements and that books and records would probably not be investigated while casino boats were in operation.

Representative Ellis asked how a North Carolina agency could be given jurisdiction to audit sales taking place outside the three-mile jurisdiction.

Chairman Hackney asked Ms. Fulton what the airlines do with regard to alcohol sales. Ms. Fulton replied that airlines do not hold permits for planes while in flight.

Representative Redwine stated that the impetus for the bill is to ban what can be banned and to regulate what cannot be banned. He said that the amendment is an attempt to insert additional provisions that potential casino boat operators must meet in order to establish an operation in the state.

Representative Ellis stated that the bill helps to expand the size of North Carolina's government and to use North Carolina's government as an aggravating factor against a legal activity.

Representative Redwine replied that if the bill is not passed, the General Assembly is sending the message to potential casino boat operators that the state is open for business. He further stated that he feels that most of North Carolina's citizens would feel that this activity is not in keeping with the character of our coastal communities and that government should step in and ban what they can, and regulate what cannot be banned.

Representative Ellis asked that Representative Redwine define the difference between persons boarding casino boats and boarding buses heading to Atlantic City for the purpose of gambling. Representative Redwine replied that he had no problem with persons boarding a bus to Atlantic City or a plane to Las Vegas, but that he did not wish for our coastal communities to become the destination of persons for the purpose of gambling.

Chairman Hackney questioned Ms. Hayes regarding the jurisdiction to enforce the state's ABC laws. Ms. Hayes replied that while docked, the laws can be enforced, but outside the three-mile limit, they cannot be.

Ms. Fulton stated that it was her opinion that enforcement could occur outside the three-mile limit. She said that when a permit is issued to a facility, that becomes the licensed premises. The General Assembly has given the ABC Commission and ALE the authority to inspect the operation of every licensed premises. She said that the fact that the Commission does not have boats would not frustrate the record-keeping requirements and food sales requirements that might be placed on the boat.

Representative Redwine moved adoption of the amendment. The amendment was adopted.

Representative Redwine offered a forth amendment, (Attachment VI). Ms. Hayes explained that the amendment created a new subsection to require the permittee to comply with all existing rules regarding record keeping and recording for tour boats.

Representative Redwine moved adoption of the amendment. The amendment was adopted.

Chairman Hackney asked if persons outside the Committee wished to be heard. Mr. John Rustin, North Carolina Family Policy Council, was recognized. Mr. Rustin stated that the Council agrees with the intent of the bill, but suggested that the Committee might consider who would enforce the restrictions against gambling within the state's jurisdiction.

Chairman Hackney stated that he felt this could be enforced by any law enforcement officer with general jurisdiction. Ms. Hayes replied that they could, with probable cause to believe that gambling was taking place within the jurisdiction.

Representative Redwine moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, that **the original bill be**

given an unfavorable report, and that the bill be re-referred to the Committee on Finance. The motion carried, with Representative Ellis voting against the motion, (Attachment VII). A copy of the committee substitute is attached, (Attachment VIII).

The meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I COMMITTEE — **February 23, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney

Incomplete account of visitors - Registration sheet was not properly distributed by Dpt.-at-Large and pages attending the meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 19

Short Title: Casino Boats Regulated. (Public)

Sponsors: Representatives Redwine; Barefoot, Cole, Culp, Decker, Edwards, Goodwin, Hill, Hurley, Luebke, McComas, Smith, Thompson, and C. Wilson.

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

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

Whereas, North Carolina has a long history of outlawing gambling within the State; with gambling being illegal since 1891, allowing gambling in houses of public entertainment being illegal since 1799, and the possession of gambling devices outlawed in this State since 1791; and

Whereas, casino boats have started "gambling cruise to nowhere" operations in several states along the Atlantic Ocean, in an attempt to avoid the application of similar laws prohibiting gambling and the possession of gambling devices, with passengers embarking at ports within the State, passing beyond the three-mile State criminal jurisdictional limit where the gambling and use of the gambling devices actually take place, and then returning to the same port within the State where the passengers disembark; and

Whereas, the federal government has preempted regulation of the possession of gambling devices on certain casino boats that leave a port in one state, make at least one intervening stop in a second state, and then return to the same or

another port in the first state as specified in 15 U.S.C. 1175(b)(2), commonly referred to as the Johnson Act Amendments of 1992; and

Whereas, it is the intent of the General Assembly to prohibit "gambling cruises to nowhere" in this State and to regulate, to the extent possible under federal law, all gambling cruises that originate and terminate in this State; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 3. Casino Boats.

"**§ 14-309.20. Short title.**

This Part may be referred to as the 'Gambling Cruise Prohibition and Regulation Act.'

"**§ 14-309.21. Casino boats and gambling devices; prohibited.**

(a) It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any slot machine, gaming table, illegal punchboard, or gambling device as defined in this Article or 15 U.S.C. 1171 on any vessel, boat, ship, watercraft, or barge that embarks from any point within this State and disembarks at the same or another point within this State without making an intervening stop within the boundaries of another state, possession of the United States, or a foreign country.

For purposes of this subsection an 'intervening stop' shall be when a vessel, boat, ship, watercraft, or barge does all of the following:

(1) Docks at a port.

(2) Remains continuously at that port for at least six hours.

(3) Allows passengers to disembark the vessel for sightseeing, shopping, or other similar tourism-related acts at that port.

(b) It shall be unlawful to manage, supervise, control, operate, or own any vessel or craft during which time the person intentionally causes or knowingly permits a violation of subsection (a) of this section.

(c) It shall be unlawful to solicit, entice, induce, persuade, or procure, or to aid in soliciting, enticing, inducing, persuading, or procuring any person to visit or embark on any vessel, boat, ship, watercraft, or barge for any purpose that constitutes a violation of this Article.

(d) This section shall not apply to possession or transportation of slot machines, gaming tables, illegal punchboards, or gambling devices on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the first point of entry into North Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from North Carolina waters, provided that nothing herein shall preclude prosecution for any other offense under this Article.

"**§ 14-309.22. Penalty for violation.**

(a) A person who violates G.S. 14-309.21 shall be guilty of a Class A1 misdemeanor and shall be fined up to five thousand dollars ($5,000) and imprisoned in the discretion of the court.

(b) Alcohol law enforcement officers and any law enforcement officer with subject matter and territorial jurisdiction, who have probable cause to believe any slot machine, gaming table, illegal punchboard, or gambling device is being manufactured, reconditioned, repaired, sold, transported, possessed, or used in violation of G.S. 12-309.21, may take any of the following actions:

(1) Seize the slot machine, gaming table, illegal punchboard, or gambling device.

(2) Seize any monies, other property, or thing of value used in conjunction with or derived from the unlawful use of such illegal device.

(3) Seize any vessel, boat, ship, watercraft, or barge upon which an illegal slot machine, gaming table, illegal punchboard, or other gambling device is found.

(c) Upon conviction, a court of competent jurisdiction shall enter an order directing the seizure, forfeiture, and sale of any vessel, boat, ship, watercraft, or barge along with all of its gear, engines, tackle, and all other nautical, navigation, and safety equipment, furniture and personal property of any description. Any means of conveyance to and from an illegally used vessel, boat, ship, watercraft, or barge shall also be ordered seized, forfeited, and sold. The proceeds of a sale pursuant to this subsection shall be applied, in order, to the costs of seizure, storage, and sale, with the balance paid to the school fund in the county in which the property is seized.

"§ 14-309.23. Authority of division of alcohol law enforcement officers.

(a) Authority. -- In the case of any tour boat or vessel, boat, ship, watercraft, or barge possessing an alcoholic beverage permit pursuant to Chapter 18B of the General Statutes, alcohol law enforcement agents shall, at any time it reasonably appears that someone is on board, have authority to board and investigate the operation of the craft to ensure compliance with the provisions of the ABC law and this Article to include viewing the entire premises, and examining any books, logs, and records of the permittee.

(b) Interference with inspection. -- Refusal by a permittee or by any employee of a permittee to permit an agent to board to make an inspection authorized by subsection (a) of this section shall be cause for revocation, suspension, or other action against the permit of the permittee as provided in G.S. 18B-104.

(c) It shall be a Class 2 misdemeanor for any person to resist or obstruct an agent attempting to make a lawful inspection under this section.

"§ 14-309.24. Regulation of casino boats operating pursuant to federal law.

(a) The operator of any vessel, boat, ship, watercraft, or barge, the operation of which would be illegal in this State except for the exclusions provided in 15 U.S.C. 1175(b)(2), shall comply with all of the following:

(1) The operator shall comply with the applicable provisions of Chapter 105 of the General Statutes including paying a privilege tax in accordance with G.S. 105-40.1 and withholding and reporting gambling winnings in accordance with G.S. 105-163.3A.

(2) If alcoholic beverages are to be sold to the passengers, the operator shall obtain a 'casino boat' permit as provided for in G.S. 18B-1006(n).

(3) The operator shall, while operating the vessel within North Carolina waters, comply with the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters."

Section 2. G.S. 18B-1006 is amended by adding a new subsection:

"(n) Casino boats. -- The Commission may issue a 'casino boat' permit to a boat that is operated pursuant to G.S. 14-309.24 if the boat meets all of the following conditions:

(1) The boat shall serve meals on each voyage and shall have a dining area with seating for at least 36 people.

(2) The boat's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(3) A boat holding a 'casino boat' permit may also hold the permits listed in G.S. 18B-1001(1), (3), (5), and (10), but no off-premises sales may be made pursuant to those permits.

(4) A boat shall have a home port in an area where issuance of all of the permits listed in subdivision (3) of this subsection are legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid only during voyages that leave and return to the boat's home port, and apply only if the boat docks in areas within this State where sales are legal, except in an emergency.

(5) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(6) The permit fees are paid for the applicable permits listed in subdivision (3) of this section and for a 'casino boat' permit.

(7) The requirements of all other applicable provisions of this Chapter are met."

Section 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $400.00.
(2) Off-premises malt beverage permit -- $400.00.
(3) On-premises unfortified wine permit -- $400.00.
(4) Off-premises unfortified wine permit -- $400.00.
(5) On-premises fortified wine permit -- $400.00.
(6) Off-premises fortified wine permit -- $400.00.
(7) Brown-bagging permit -- $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.

(8) Special occasion permit -- $400.00.
(9) Limited special occasion permit -- $50.00.
(10) Mixed beverages permit -- $1,000.
(11) Culinary permit -- $200.00.
(12) Unfortified winery permit -- $300.00.
(13) Fortified winery permit -- $300.00.
(14) Limited winery permit -- $300.00.
(15) Brewery permit -- $300.00.
(16) Distillery permit -- $300.00.
(17) Fuel alcohol permit -- $100.00.
(18) Wine importer permit -- $300.00.
(19) Wine wholesaler permit -- $300.00.
(20) Malt beverage importer permit -- $300.00.
(21) Malt beverage wholesaler permit -- $300.00.
(22) Bottler permit -- $300.00.
(23) Salesman permit -- $100.00.
(24) Vendor representative permit -- $50.00.
(25) Nonresident malt beverage vendor permit -- $100.00.
(26) Nonresident wine vendor permit -- $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $50.00.
(28) Winery special event permit -- $200.00.
(29) Mixed beverages catering permit -- $200.00.
(30) Guest room cabinet permit -- $1,000.
(31) Liquor importer/bottler permit -- $500.00.
(32) Cider and vinegar manufacturer permit -- $200.00.
(33) Brew on premises permit -- $400.00.
(34) Casino boat permit -- $10,000."

Section 4. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(4) Gambling boat voyage. -- A voyage of a commercial vessel transporting passengers engaged in gambling aboard the vessel, during which passengers embark in this State and disembark only in this State or a contiguous state."

Section 5. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-40.1. Gambling boat voyages.**

A person engaged in the business of operating gambling boat voyages must pay a tax on the business at the rate of six dollars ($6.00) for each passenger who embarks on a gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer must report to the Secretary the number of passengers who embarked on the taxpayer's gambling boat voyages during the previous month and must pay the tax at the time the report is due."

Section 6. G.S. 105-163.1 is amended by adding a new subdivision to read:

"(5a) Gambling boat operator. -- A person engaged in the business of operating gambling boat voyages."

Section 7. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a gambling boat operator, or a payer."

Section 8. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Gambling boat operators must withhold taxes.**

(a) Requirement. -- Every gambling boat operator who pays a resident of this State more than six hundred dollars ($600.00) in gambling winnings during a gambling boat voyage must deduct and withhold from the winnings paid to the resident the State income taxes due on the winnings as provided in this section. The amount of taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat operator withholds are held in trust for the Secretary.

(b) Returns; due date. -- A gambling boat operator must file a return with the Secretary on a form prepared by the Secretary and must provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the gambling boat operator pays gambling winnings to a resident of this State. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(c) Annual statement. -- A gambling boat operator required to deduct and withhold from a resident's gambling winnings under this section must furnish to the resident duplicate copies of a written information statement. The statement is due by January 31 following the calendar year and must show the following:

(1) The gambling boat operator's name, address, and taxpayer identification number.

(2) The resident's name, address, and taxpayer identification number.

(3) The total amount of gambling winnings paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

(5) Any other information required by the Secretary.

(d) Report to Secretary. -- Each gambling boat operator must file with the Secretary an annual report that compiles the information contained in each of the operator's statements to residents and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that he or she is not a resident of this State. The operator must retain this information with its records."

Section 9. G.S. 105-163.9 reads as rewritten:

"**§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the ~~wages~~ wages, winnings, or compensation of the agent's ~~employees~~ employees, passengers, or contractors. A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266."

Section 10. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the ~~wages~~ wages, winnings, or compensation of an individual ~~shall be~~ is allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. ~~105-163.3 or G.S.~~ 105-163.3, 105-163.3A, or 105-163.7 and any other information the Secretary requires."

Section 11. This act is effective when it becomes law. Sections 4 through 10 of this act become effective on the first day of the third calendar month after this act becomes law.

ATTACHMENT III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 19

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

H19-ALK-1 Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Representative Redwine

moves to amend the bill on page 2, lines 38 and 39, by rewriting those lines to read:
"United States from the point of departure from North Carolina waters.
(e) Nothing contained in this section shall preclude prosecution for any other offense under this Article or for the use of any slot machine, gaming table, illegal punchboard, or gambling device on any vessel while docked within the territorial waters of this State."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 19

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

H19-ASA-001 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Redwine

moves to amend the bill on page 2, lines 42-43,
by rewriting the lines to read:
"misdemeanor."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT V

(Please type or use ballpoint pen)

H. B. No. 19 DATE

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

Rep.) REDWINE
Sen.)

moves to amend the bill on page 3, line 22,

by rewriting the line to read:
"§ 14-309.23. Authority of alcohol law enforcement division and Alcoholic Beverage Control Commission.

and on page 3, line 25 by rewriting the line to read:
"General Statutes, any alcohol law enforcement agent or any employee of the Alcoholic Beverage Control Commission, shall, at any time it reasonably"

and on page 3, line 31 by rewriting the line to read:
"permittee to permit an alcohol law enforcement agent or any employee of the Alcoholic Beverage Control Commission to board to make an inspection authorized by subsection"

and on page 3, line 34
by deleting "an agent" and inserting "an authorized person"

SIGNED

ADOPTED FAILED TABLED

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT VI

(Please type or use ballpoint pen)

H. B. No. 19 DATE _____

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

Rep.) REDDING
Sen.)

moves to amend the bill on page 4, line 31,

by rewriting the line to read:

" (7) The permittee shall comply with all Commission rules regarding record keeping and reporting for tour boats.

(8) The requirements of all other applicable provisions of this Chapter "

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A [redacted]

1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 19 A BILL TO BE ENTITLED AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 19
Committee Substitute Favorable 2/24/99

Short Title: Casino Boats Regulated. (Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN CASINO BOATS FROM OPERATING IN NORTH CAROLINA AND TO REGULATE CERTAIN CASINO BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW AND TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

Whereas, North Carolina has a long history of outlawing gambling within the State; with gambling being illegal since 1891, allowing gambling in houses of public entertainment being illegal since 1799, and the possession of gambling devices outlawed in this State since 1791; and

Whereas, casino boats have started "gambling cruise to nowhere" operations in several states along the Atlantic Ocean, in an attempt to avoid the application of similar laws prohibiting gambling and the possession of gambling devices, with passengers embarking at ports within the State, passing beyond the three-mile State criminal jurisdictional limit where the gambling and use of the gambling devices actually take place, and then returning to the same port within the State where the passengers disembark; and

Whereas, the federal government has preempted regulation of the possession of gambling devices on certain casino boats that leave a port in one state, make at least one intervening stop in a second state, and then return to the same or another port in the first state as specified in 15 U.S.C. 1175(b)(2), commonly referred to as the Johnson Act Amendments of 1992; and

Whereas, it is the intent of the General Assembly to prohibit "gambling cruises to nowhere" in this State and to regulate, to the extent possible under federal law, all gambling cruises that originate and terminate in this State; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 3. Casino Boats.

"**§ 14-309.20. Short title.**

This Part may be referred to as the 'Gambling Cruise Prohibition and Regulation Act.'

"**§ 14-309.21. Casino boats and gambling devices; prohibited.**

(a) It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any slot machine, gaming table, illegal punchboard, or gambling device as defined in this Article or 15 U.S.C. 1171 on any vessel, boat, ship, watercraft, or barge that embarks from any point within this State and disembarks at the same or another point within this State without making an intervening stop within the boundaries of another state, possession of the United States, or a foreign country.

For purposes of this subsection, an 'intervening stop' shall be when a vessel, boat, ship, watercraft, or barge does all of the following:

(1) Docks at a port.

(2) Remains continuously at that port for at least six hours.

(3) Allows passengers to disembark the vessel for sightseeing, shopping, or other similar tourism-related acts at that port.

(b) It shall be unlawful to manage, supervise, control, operate, or own any vessel or craft during which time the person intentionally causes or knowingly permits a violation of subsection (a) of this section.

(c) It shall be unlawful to solicit, entice, induce, persuade, or procure, or to aid in soliciting, enticing, inducing, persuading, or procuring any person to visit or embark on any vessel, boat, ship, watercraft, or barge for any purpose that constitutes a violation of this Article.

(d) This section shall not apply to possession or transportation of slot machines, gaming tables, illegal punchboards, or gambling devices on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the first point of entry into North Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from North Carolina waters, provided that nothing herein shall preclude prosecution for any other offense under this Article.

(e) Nothing contained in this section shall preclude prosecution for any other offense under this Article or for the use of any slot machine, gaming table, illegal punchboard, or gambling device on any vessel while docked within the territorial waters of this State.

"**§ 14-309.22. Penalty for violation.**

(a) A person who violates G.S. 14-309.21 shall be guilty of a Class A1 misdemeanor.

(b) Alcohol law enforcement officers and any law enforcement officer with subject matter and territorial jurisdiction, who have probable cause to believe any slot machine, gaming table, illegal punchboard, or gambling device is being manufactured, reconditioned, repaired, sold, transported, possessed, or used in violation of G.S. 14-309.21, may take any of the following actions:

(1) Seize the slot machine, gaming table, illegal punchboard, or gambling device.

(2) Seize any monies, other property, or thing of value used in conjunction with or derived from the unlawful use of such illegal device.

(3) Seize any vessel, boat, ship, watercraft, or barge upon which an illegal slot machine, gaming table, illegal punchboard, or other gambling device is found.

(c) Upon conviction, a court of competent jurisdiction shall enter an order directing the seizure, forfeiture, and sale of any vessel, boat, ship, watercraft, or barge along with all of its gear, engines, tackle, and all other nautical, navigation, and safety equipment, furniture, and personal property of any description. Any means of conveyance to and from an illegally used vessel, boat, ship, watercraft, or barge shall also be ordered seized, forfeited, and sold. The proceeds of a sale pursuant to this subsection shall be applied, in order, to the costs of seizure, storage, and sale, with the balance paid to the school fund in the county in which the property is seized.

"§ 14-309.23. Authority of alcohol law enforcement division and Alcoholic Beverage Control Commission.

(a) Authority. -- In the case of any tour boat or vessel, boat, ship, watercraft, or barge possessing an alcoholic beverage permit pursuant to Chapter 18B of the General Statutes, any alcohol law enforcement agent or employee of the Alcoholic Beverage Control Commission shall, at any time it reasonably appears that someone is on board, have authority to board and investigate the operation of the craft to ensure compliance with the provisions of the ABC law and this Article to include viewing the entire premises, and examining any books, logs, and records of the permittee.

(b) Interference with inspection. -- Refusal by a permittee or by any employee of a permittee to permit an alcohol law enforcement agent or employee of the Alcoholic Beverage Control Commission to board to make an inspection authorized by subsection (a) of this section shall be cause for revocation, suspension, or other action against the permit of the permittee as provided in G.S. 18B-104.

(c) It shall be a Class 2 misdemeanor for any person to resist or obstruct an authorized person attempting to make a lawful inspection under this section.

"§ 14-309.24. Regulation of casino boats operating pursuant to federal law.

(a) The operator of any vessel, boat, ship, watercraft, or barge, the operation of which would be illegal in this State except for the exclusions provided in 15 U.S.C. 1175(b)(2), shall comply with all of the following:

(1) The operator shall comply with the applicable provisions of Chapter 105 of the General Statutes including paying a privilege

tax in accordance with G.S. 105-40.1 and withholding and reporting gambling winnings in accordance with G.S. 105-163.3A.

(2) If alcoholic beverages are to be sold to the passengers, the operator shall obtain a 'casino boat' permit as provided for in G.S. 18B-1006(n).

(3) The operator shall, while operating the vessel within North Carolina waters, comply with the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters."

Section 2. G.S. 18B-1006 is amended by adding a new subsection:

"(n) Casino boats. -- The Commission may issue a 'casino boat' permit to a boat that is operated pursuant to G.S. 14-309.24 if the boat meets all of the following conditions:

(1) The boat shall serve meals on each voyage and shall have a dining area with seating for at least 36 people.

(2) The boat's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(3) A boat holding a 'casino boat' permit may also hold the permits listed in G.S. 18B-1001(1), (3), (5), and (10), but no off-premises sales may be made pursuant to those permits.

(4) A boat shall have a home port in an area where issuance of all of the permits listed in subdivision (3) of this subsection are legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid only during voyages that leave and return to the boat's home port, and apply only if the boat docks in areas within this State where sales are legal, except in an emergency.

(5) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(6) The permit fees are paid for the applicable permits listed in subdivision (3) of this section and for a 'casino boat' permit.

(7) The permittee shall comply with all Commission rules regarding record keeping and reporting for tour boats.

(8) The requirements of all other applicable provisions of this Chapter are met."

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(2) Off-premises malt beverage permit -- $400.00.

(3) On-premises unfortified wine permit -- $400.00.

(4) Off-premises unfortified wine permit -- $400.00.

(5) On-premises fortified wine permit -- $400.00.

(6) Off-premises fortified wine permit -- $400.00.
(7) Brown-bagging permit -- $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit -- $400.00.
(9) Limited special occasion permit -- $50.00.
(10) Mixed beverages permit -- $1,000.
(11) Culinary permit -- $200.00.
(12) Unfortified winery permit -- $300.00.
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(14) Limited winery permit -- $300.00.
(15) Brewery permit -- $300.00.
(16) Distillery permit -- $300.00.
(17) Fuel alcohol permit -- $100.00.
(18) Wine importer permit -- $300.00.
(19) Wine wholesaler permit -- $300.00.
(20) Malt beverage importer permit -- $300.00.
(21) Malt beverage wholesaler permit -- $300.00.
(22) Bottler permit -- $300.00.
(23) Salesman permit -- $100.00.
(24) Vendor representative permit -- $50.00.
(25) Nonresident malt beverage vendor permit -- $100.00.
(26) Nonresident wine vendor permit -- $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $50.00.
(28) Winery special event permit -- $200.00.
(29) Mixed beverages catering permit -- $200.00.
(30) Guest room cabinet permit -- $1,000.
(31) Liquor importer/bottler permit -- $500.00.
(32) Cider and vinegar manufacturer permit -- $200.00.
(33) Brew on premises permit -- $400.00.
(34) Casino boat permit -- $10,000."

Section 4. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(4) Gambling boat voyage. -- A voyage of a commercial vessel transporting passengers engaged in gambling aboard the vessel, during which passengers embark in this State and disembark only in this State or a contiguous state."

Section 5. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-40.1. Gambling boat voyages.**

A person engaged in the business of operating gambling boat voyages must pay a tax on the business at the rate of six dollars ($6.00) for each passenger who embarks on a gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer must report to the Secretary the number of passengers who embarked on the

taxpayer's gambling boat voyages during the previous month and must pay the tax at the time the report is due."

Section 6. G.S. 105-163.1 is amended by adding a new subdivision to read:

"(5a) Gambling boat operator. -- A person engaged in the business of operating gambling boat voyages."

Section 7. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a gambling boat operator, or a payer."

Section 8. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Gambling boat operators must withhold taxes.**

(a) Requirement. -- Every gambling boat operator who pays a resident of this State more than six hundred dollars ($600.00) in gambling winnings during a gambling boat voyage must deduct and withhold from the winnings paid to the resident the State income taxes due on the winnings as provided in this section. The amount of taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat operator withholds are held in trust for the Secretary.

(b) Returns; due date. -- A gambling boat operator must file a return with the Secretary on a form prepared by the Secretary and must provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the gambling boat operator pays gambling winnings to a resident of this State. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(c) Annual statement. -- A gambling boat operator required to deduct and withhold from a resident's gambling winnings under this section must furnish to the resident duplicate copies of a written information statement. The statement is due by January 31 following the calendar year and must show the following:

(1) The gambling boat operator's name, address, and taxpayer identification number.

(2) The resident's name, address, and taxpayer identification number.

(3) The total amount of gambling winnings paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

(5) Any other information required by the Secretary.

(d) Report to Secretary. -- Each gambling boat operator must file with the Secretary an annual report that compiles the information contained in each of the operator's statements to residents and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual

documentation proving that he or she is not a resident of this State. The operator must retain this information with its records."

Section 9. G.S. 105-163.9 reads as rewritten:

"**§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the ~~wages~~ wages, winnings, or compensation of the agent's ~~employees~~ employees, passengers, or contractors. A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266."

Section 10. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the ~~wages~~ wages, winnings, or compensation of an individual ~~shall be~~ is allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. ~~105-163.3 or G.S.~~ 105-163.3, 105-163.3A, or 105-163.7 and any other information the Secretary requires."

Section 11. This act is effective when it becomes law. Sections 4 through 10 of this act become effective on the first day of the third calendar month after this act becomes law.

HOUSE JUDICIARY I COMMITTEE

February 25, 1999

Agenda

House Bill 41 – Cartway Amendment
Representative Brown

HOUSE JUDICIARY I COMMITTEE
February 25, 1999
Minutes

The House Judiciary I Committee met on Thursday, February 25, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Clary, Ellis, Gardner, Miller, Moore, Nesbitt and Redwine. The Visitation Registration Sheet denotes visitors, (Attachment I).

Chairman Hackney stated that **House Bill 111, Traffic Enforcement Statistics**, had been removed from the agenda for consideration at the request of Representative Sutton. The companion Senate bill was being considered during the same hour, and persons interested in the bill were attending the Senate committee meeting.

Chairman Hackney stated that the committee would hear an explanation of House Bill 41, and have committee discussion on the bill, but that a vote would not be taken. Representative Brown was recognized to explain **House Bill 41, AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS,** (Attachment II). Representative Brown stated that a bill identical to this one had been passed in 1995, and had been law until its sunset in 1997. He said that the bill would allow a person who owns property that is landlocked to establish access to a highway.

Chairman Hackney asked Ms. Susan Hayes, Committee Counsel, to comment on current law as it applies to cartways, and to give further explanation of the bill.

Ms. Hayes stated that a cartway is a right-of-way, or easement across the property of another to access landlocked land. This process is not done under the traditional easement procedure where a landowner has sold the landlocked property to someone and was required to provide a right-of-way. A cartway occurs when the landowner is landlocked not at the fault of the adjoining landowner. Currently cartway procedures are allowed only when the land is going to be used for such purposes as cultivation, harvest, mining, cutting of timber, and for public and private cemeteries. She said that current cartway law is not allowed for a residence. She stated that the bill would reinact a bill that was passed in 1995, but had a sunset date of July 1, 1997. The sunset did go into effect resulting in a return, almost totally, back to the old law. Ms. Hayes stated that the bill would make seven principle changes to the existing cartway law. She explained the changes that are outlined on a summary that was distributed to the members of the committee, (Attachment III). Ms. Hayes stated that the bill before the committee was not technically correct. In 1995, when the law was enacted, a Senate floor amendment offered by Senator Dan Simpson was incorrectly drafted. The resulting language became uncodified language. Being uncodified language did not make it any less the law, but it was not originally placed into the statute. It has been placed in the statute by the codifier of the statute. Ms. Hayes stated that the uncodified language requires that compensation to the landowner for the establishment of a cartway over the property of another is provided in Chapter 40A, Article 4, which is the eminent section of the statutes. She noted that this would be corrected before this bill is passed out of the committee.

Chairman Hackney stated that there had been a bill in 1995 by Representative Brown to do the same thing as House Bill 41. He said that the bill had been enacted with a two-year sunset and with a provision that allowed that compensation to landowners for the establishment of a cartway over the property of another shall be as provided in Chapter 40A, Article 4 of the

North Carolina General Statutes. He said that this is the procedure used when the state or a public utility condems land.

Ms. Hayes replied that the bill would not change the procedure for cartway, but the manner in which compensation to the landowner whose property is being crossed is determined.

Chairman Hackney asked if the Brown bill, as amended by Simpson, had expired in its entirity. Ms. Hayes replied that the Simpson amendment has not expired because it was in a different section of the bill. She said that only two sections of the bill expired in 1997.

Representative Brown noted that the current bill does not specify 7 acres of land for one dwelling as the memorandum states. Ms. Hayes responded that he was correct.

Committee discussion followed. Representative Nesbitt asked for further explanation of the current law that did not sunset in 1997. Ms. Hayes replied that the part of the that did not expire was the requirement to use Chapter 40A, Article 4, eminent domain, in determining compensation to the subservient landowner, as well as a portion in Chapter 136.68 that was enacted in 1995 and technically did not expire. She stated that the law today is the part of House Bill 41 that is not underlined or struck through, plus the section regarding provisions of Chapter 40A.

Representative Redwine asked why the law had not been reinacted at the time of the sunset. Chairman Hackney responded that this is a most controversial issue that passes in some years and not in others

Representative Brown requested that the Chairman recognize Mr. Phil Wagoner of Mt. Airy, North Carolina.. Mr. Wagoner, a land surveyor, spoke in support of the bill.

Chairman Hackney recognized Representative Gillespie, who was visiting the meeting. Representative Gillespie asked Mr. Wagoner if the State Board of Surveyors shared his views. Mr. Wagoner replied that the Board had taken no position on the bill.

Representative Rex Baker, also visiting the meeting, was recognized and stated several concerns with the bill. He noted that he had opposed the bill during the previous Session of the General Assembly. He said that he felt that the legislation furthered the State's delegation of its power of eminent domain to a private individual. He said that historically, the purpose of cartways was to allow access across the land of another for a public purpose, and that it was his opinion that this bill takes delegating that power too far and that this type of legislation should not pass.

Mr. Brown Osbourne, North Wilkesboro, was recognized and spoke in support of the bill. His comments are attached, (Attachment IV).

Representative Miller was recognized. He noted concern for the rights of the landowner whose land would be taken against his wishes for a cartway. He stated that there is no greater authority that the State can give to any entity that the right of condemnation and that the legislature has been very cautious in that respect. He questioned whether the bill included a provision for attorney fees for those who must have a day in court in order to get fair compensation for their property. Ms. Hayes noted that such provision was included in the bill. Representative Miller also asked if the bill addressed restrictions on an easement after it had been laid out. Ms. Hayes replied that it did not.

Chairman Hackney noted that the Committee would have to ajourn and that additional questions could be addressed at a future meeting.

The meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — **February 25, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary W. Thompson	OSPL
Phil Wagoner	Wagoner Surveying, Mt. Airy
Pamela Best	AOC
Mark Benson	The Capitol Group
Robert Reece	Sebum Alley P.A.
Jon M. Kibler	Moore + Van Allen
John McAlister	Duke Energy
Lisa Reyes	The Insider
Jane Upchurch	CPTC
Bill Scogged	NC BT
Michelle Cook	Weyerhaeuser
[illegible]	NCAHA
Richie Street	PPAB
Jack Cozort	PPAB
PG	NCFB
Paul Wilms	NCMBA
Ryan Kaylor	Kaylor Law Firm
Andy Romanet	N.C.L.M.
Bob Blocum	NC Forestry Assoc.
Lisa Martin	Upper Neuse River Basin Assn.
Mike Carpenter	NCDOT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H **1**

HOUSE BILL 41

Short Title: Cartway Amendment. (Public)

Sponsors: Representative Brown.

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

February 8, 1999

A BILL TO BE ENTITLED

AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-69 reads as rewritten:

"**§ 136-69. Cartways, tramways, etc., laid out; procedure.**

~~If~~ In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public ~~road~~ road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in ~~the preceding section (G.S. 136-68), and if it shall~~ G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not ~~less~~ more than 18 feet ~~in width,~~ of travel surface or such other minimum width requested in the petition and found necessary

and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cableways, chutes, and ~~flumes, and~~ flumes. If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there exists a private railroad crossing, that private railroad crossing may be used as part of a cartway established under this Article provided the person, firm, association, or corporation seeking the cartway agrees to share proportionately with other landowners authorized to use the crossing the cost of maintaining the private crossing and to protect and hold harmless the railroad against all liability associated with the crossing, provided the railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except as herein provided for the establishment of a cartway over an existing private railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which has been condemned by a railroad, or has been obtained for a railroad's use as a right-of-way, depot, or station house shall be used for the establishment of a cartway or other use under this Article except by agreement with the railroad. Should a petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate in good faith the location of the new crossing at the requested location or some other mutually agreeable location. The jury of view shall assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. A permissive use of a right-of-way or easement across the land of another shall not be a bar to the establishment of a cartway under this Article. In determining the path of a cartway, tramway, or railway, the jury of view shall give priority to the location of previously used easements or cartways."

Section 2. G.S. 136-70 reads as rewritten:

"**§ 136-70. Alteration or abandonment of cartways, etc., in same manner.**

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested ~~party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same.~~ party. A cartway established under this Article shall not terminate until the time specified in the petition and as found necessary and proper by the court."

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

North Carolina General Assembly
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February 24, 1999

TO: Representative Joe Hackney, Chairman
House Judiciary I Committee

FROM: Susan L. Hayes, Committee Counsel

RE: H41 – Cartway Amendment

House Bill 41 amends the law regarding the establishment of cartways to make the following changes:

1) Allow single-family homesteads of seven or more acres that lack access to public roads to use the cartway procedure to create road access.
2) Limits cartways to a maximum of 18 feet wide of travel surface and 30 feet wide for cuts, fills and ditches.
3) Permits the use of private railroad crossings for part of a cartway, provided the person seeking the cartway shares the cost of maintenance of the crossing with the railroad and other owners, and agrees to indemnify the railroad against liability associated with the crossing.
4) Requires a railroad to negotiate in good faith with a person seeking a cartway that requires a new railroad crossing.
5) Removes permissive use of a right-of-way or easement as a bar to establishing a cartway.
6) Requires cartway juries to give priority to the location of previously used easements or cartways.
7) Removes the five-year termination period for cartways established for the removal of timber, and provides that all cartways terminate at the time specified in the petition as found by the court.

This act is effective when it becomes law.

HISTORICAL NOTE

In 1995, an almost identical piece of legislation was passed by the General Assembly, but that legislation expired on July 1, 1997. The current legislation would make these changes to the statutes on a permanent basis.

Cartway.doc

1. There are a variety of right of way types; Deeded, proscriptive possession use, implied, and easement by necessity.

2. Cartway law was drafted many years ago as a vehicle of last resort to cover land tracts which fell in between the cracks. There is a great mis-conception among the public that everyone is entitled to a right of way one way or another. However it is possible to be legally landlocked.

3. However the cartway act was only for certain specific purposes such as Mining, industry, farming, timbering. It does not enable one to obtain a cartway for your residence or just to get to your land. Additionally, timbering is just for a 5 year period unless asked for in the petition.

4. Under present act you cannot do a cartway unless you are blocked, permissive use will defeat a cartway petition. Try obtaining a loan on a house without a right of way.

5. Time moves on, we progress, laws need to be updated to keep pace with changing times. Now we have a Department of Natural Resources with guidelines on how much grade is allowed and cut and fill on steep slopes. Public watersheds, trout streams, must be protected by laws that were not anticipated when these acts were passed many years ago.

6. A cartway petition may be defeated by showing the petitioner has another right of way. Conversely a cartway petition may be instituted by claiming hardship even though one has another legal right of way.

7. If you see fit to do these changes you are not giving someone a big club to bash people with. This amendment is a conservative fine tuning of the cartway act and does not in any way affect a long history of embedded case law and court decisions.

8. That old gray-haired widow will be on both sides of the cartway problem. I refused to buy a tract in Yadkin County owned by 79 year old widow because she only had 20 feet and the adjoining owners would not sell any more. There was another old gray haired widow on highway #16 with a fairly steep roadway leading into the house from the West. In 1966 the adjoining owner gave permission for a level roadway about 30 feet long through his property from the East. They used this by permissive use for about 30 years with the woman being a widow the last 10. Question. Would it be a legal hardship for the old gray haired widow to use the long abandoned grown up steep road on the West? Probably. Would it be a hardship for a developer who later purchased the property to be required to use the same abandoned steep road? Probably not!!

9. My brother is a retired Judge and drafted my proposal. He has always maintained our state had the worst right of way law in the country. We just need an upgraded act so that everyone in the state has a right to a right of way one way or another. People will be litigating this long after all of us are not even a memory, you can't stop litigation. Put people in a position of power like you begging for a right of way and some of them will behave badly. Its just human nature. In the words of Charles De Gaul "the more I learn about mankind, the more I find myself loving dogs".

HOUSE JUDICIARY I COMMITTEE

March 4, 1999

Agenda

House Bill 199 – Safe Families Act
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
March 4, 1999
Minutes

The House Judiciary I Committee met on Thursday, March 4, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Blue, Clary, Ellis, Insko, Miller, Moore, Redwine, and Thompson. Visitors are denoted on the Visitation Registration Sheet, (Attachment I).

Chairman Hackney noted that **House Bill 199, AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE**, (Attachment II), contained recommendations of the Governor's Task Force on Domestic Violence. He stated that he had introduced the bill on the House side and that Senator Cooper had introduced an identical bill in the Senate. Chairman Hackney recognized Representative Miller to preside during the explanation and discussion of the bill.

Representative Hackney stated that the bill provides for entry of any protective order issued or registered in North Carolina onto the National Criminal Information Center (NCIC). The bill deletes a current subsection of the statues which sets up a contempt proceeding for the violation of the order, and makes it a Class A1 misdemeanor to violate, in North Carolina, a valid protective order issued in another state or Indian tribe. Representative Hackney stated that the full faith and credit provisions of G.S. 50B-4(d) are modified to give full faith and credit to out-of-state orders in a very broad way. He stated that a law enforcement officer may rely on a copy of the protective order issued by another state, and the statement of the person protected by the order, that the order remains in effect. He said that registration of an order is not required, but is allowed, at which time a copy would be sent to the sheriff for entry into the NCIC. Representative Hackney stated that Section 3 contained technical changes. He noted that G.S. 1C is the registration for foreign judgments and that the bill allows for domestic violence protective orders to be added to the list for registration. He noted that Section 5 of the bill would amend the statutes to eliminate the current provision that allows law enforcement officers not to respond to a request for assistance in a domestic violence situation when multiple complaints have been made within a 48-hour period. The bill would allow for full jurisdiction of the sheriff's department to assess the situation and to take steps as authorized and necessary. Representative Hackney stated that the bill allows a law enforcement officer to make a warrantless arrest as it applies to domestic violence situations.

Further explanation of the bill can be found in the summary prepared by Ms. Susan Hayes, Committee Counsel, (Attachment III).

Representative Ellis asked if there was a process to determine the validity of an out-of-state protective order.

Representative Hackney stated that the order would be presumptively valid until its validity could be checked. He noted that such orders could not be checked in the middle of the night, which is when many of these incidents occur, but that as soon as the validity is questioned, and some examination can be made, it can be rectified, if a mistake has been made.

Representative Ellis asked when the NCIC entry would be made, and if a penalty would be imposed if an error occurred in determining the validity of an order.

Representative Hackney stated that there were penalties that probably would apply regarding errors in determining validity of an order, but that the bill does not provide specifically for penalties.

Representative Insko asked if there were multiple violations of protective orders and if data existed to determine how many of the charges that are brought are dismissed. Ms. Hayes replied that she did not have any statistics, and that generally such statistics were not kept on matters that were pleaded down.

Representative Miller asked if the bill contained any provision for an expedited hearing or the posting of bond when a complaint is suspect?

Representative Hackney responded that in his district there is a screening of suspicious complaints on a very prompt basis, and the Chief District Court Judge makes a judgment call based on investigation by the domestic violence workers associated with the sheriff's department or police department.

Representative Miller asked for clarification regarding arrests that could be made without a warrant.

Representative Hackney replied that the list includes one who has committed a felony; one who has committed a misdemeanor, and will not be apprehended unless immediately arrested; or one who may cause physical injury to himself or others, or damage to property; and other misdemeanors which are cited by General Statutes and are listed on page 4 of the bill.

Representative Clary stated that the 48-hour provision in the bill was not initiated to set up any type of additional punishment, but was initiated as a cooling off period for a domestic violence offender and came directly out of several cases around the state.

Representative Miller stated that appropriate protection is needed for victims of domestic violence, but the avenue should be open for a person to appeal to before being incarcerated.

There was considerable committee discussion. Mr. Douglas H. Kappler, State Bureau of Investigation, Department of Justice responded to various questions raised by members of the Committee.

Representative Ellis raised a question regarding the determining of the validity of an out-of-state order based upon the statement of a person protected by the order. He requested that an amendment be prepared to clarify that any person who inappropriately uses such a statement would be subject to the criminal statute for filing false charges.

Mr. Jonathan Williams, Deputy General Counsel, Department of Crime Control and Public Safety spoke briefly regarding the additional charges involving familial relationships that are addressed in the bill, and the provision that requires the Division of Criminal Information (DCI) to enter protective orders onto the NCIC data base.

No action was taken on the bill, and the meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 4, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Williams	NCMBA
[illegible]	NC Equity
Anne Winner	NCCADV
Jonathan Williams	CCPS
Jessie Starsoneck	Gov's DV Task Force
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off. Assn
David Ferrell	NC Law Enf Off Assoc
Martha Glass	DOA
Matt Osborne	AOC
Kim Hibbard	NC League of Municipalities
Johnny Henderson	CALNC
John Kuster	NCFPC
Doug Kappler	NCSBI
Betsy N. Justus	ACS
Lou Johnson	CSK
Janie Brecht	DOT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 199

Short Title: Safe Families Act. (Public)

Sponsors: Representatives Hackney; Alexander, Baddour, Barefoot, Easterling, Insko, Jarrell, Luebke, Melton, Miller, Preston, Redwine, Sherrill, and Wainwright.

Referred to: Judiciary I.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-3(d) reads as rewritten:

"(d) The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order ~~onto the Division of Criminal Information Network~~ into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Section 2. G.S. 50B-4 reads as rewritten:

"**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or

the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

~~(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.~~

(c) ~~Valid~~ A valid protective ~~orders~~ order entered pursuant to this section shall be enforced by all North Carolina law-enforcement agencies without further order of the court.

(d) ~~Valid~~ A valid protective ~~orders~~ order entered by the courts of another state or Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law-enforcement agencies of North ~~Carolina.~~ Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall forward a copy to the sheriff of that county for entry into the National Crime Information Center registry pursuant to G.S. 50B-3(d)."

Section 3. G.S. 1C-1702 reads as rewritten:

"**§ 1C-1702. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) "Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~"support~~ "child support order," as defined in ~~G.S. 52A-3(14) (The Uniform~~

~~Reciprocal Enforcement of Support Act) or~~ G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a "custody decree," as defined in G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction ~~Act).~~ Act), or a domestic violence protective order as provided in G.S. 50B-4(d).

(2) "Judgment Debtor" means the party against whom a foreign judgment has been rendered.

(3) "Judgment Creditor" means the party in whose favor a foreign judgment has been rendered."

Section 4. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order a misdemeanor.**

A person who knowingly violates a valid protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe shall be guilty of a Class A1 misdemeanor."

Section 5. G.S. 50B-5(a) reads as rewritten:

"(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law-enforcement agency. The local law-enforcement agency shall respond to the request for assistance as soon as ~~practicable; provided, however, a local law-enforcement agency shall not be required to respond in instances of multiple complaints from the same complainant if the multiple complaints are made within a 48-hour period and the local law-enforcement agency has reasonable cause to believe that immediate assistance is not needed.~~ practicable. The local law-enforcement officer responding to the request for assistance ~~is authorized to~~ may take whatever steps are reasonably necessary to protect the complainant from harm and ~~is authorized to~~ may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law-enforcement officer ~~is authorized to~~ may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

Section 6. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or
2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), ~~or 14-33(c)(2)~~ 14-33(c)(2), or 14-34 when the offense was committed by a person ~~who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.~~ with whom the alleged victim has a familial relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1.

(3) Repealed by Session Laws 1991, c. 150."

Section 7. Sections 4 and 6 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999.

ATTACHMENT III

North Carolina General Assembly
Legislative Services Office

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

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Raleigh, NC 27603-5925
(919) 733-2578

March 4, 1999

TO: Representative Joe Hackney, Chairman
House Judiciary I Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB199 – Safe Families Act

House Bill 199 enacts certain recommendations of the Governor's Task Force on Domestic Violence.

Section 1 requires the Division of Criminal Information (DCI) to enter any protective order issued or registered in North Carolina onto the National Criminal Information Center (NCIC) system to be placed into the National Protective Order Registry. North Carolina currently has it's own registry for protective orders, but that registry is not accessible nationally.

Section 2 contains two substantive changes. First, it deletes G.S. 50B-4(b), which required mandatory arrest by an officer for the purposes of setting up a contempt hearing for violation of a protection order by returning to the residence or by harassing, following, threatening, or interfering with the plaintiff. At the time of the enactment of G.S. 50B-4, the only method of "punishing" a defendant for violating the order was by contempt so the General Assembly provided a mechanism for arresting a defendant and setting bond for a contempt hearing for certain violations of the order. In 1997, the General Assembly enacted G.S. 50B-4.1 which made it a Class A1 misdemeanor to violate a protective order in any manner. (The maximum punishment for a Class A1 misdemeanor is greater than for contempt.) Now, the defendant who violates a protective order can be arrested and charged with a crime, which is the easier process for law enforcement officers and magistrates to apply. A plaintiff who wishes to enforce a violation of a protective order by a contempt proceeding may fill out a form motion before the clerk who will set up a contempt hearing before the district court judge and issue notice to the defendant. An accompanying change is set out in section 6 of this bill.

Second, this section amends the full faith and credit provisions of G.S. 50B-4(d) by specifying the procedure by which this State gives full faith and credit to out-of-state orders. It provides that orders are enforced without registration. A law enforcement officer may rely on a copy of the order and a statement by the victim that the order remains in effect in enforcing the order. Even though registration is not required, the person holding an order may register it by filing it

with the clerk of superior court. No notice is given to the defendant at the time of registration. The clerk sends a copy of the registered out-of-state order to the sheriff for entry into NCIC.

Section 3 removes domestic violence protective orders from coverage under G.S. 1C-1701 et. seq., the regular registration statute for out-of-state judgments, since G.S. 50B-4 will now specify the exclusive means for giving full faith and credit to domestic violence protective orders.

Additionally, a technical change is made to replace URESA (which was repealed in 1995) with UIFSA.

Section 4 makes it a Class A1 misdemeanor to violate in North Carolina a valid protective order issued in another state.

Section 5 amends G.S. 50B-5 to **eliminate** the current provision that allows law enforcement officers not to respond to a request for assistance in a domestic violence situation when multiple complaints have been made within a 48-hour period and the officer has reasonable cause to believe immediate assistance is not needed.

Section 6 G.S. 15A-401(b) allows a law enforcement officer to make a warrantless arrest for certain misdemeanors committed outside the officer's presence. Current law includes domestic criminal trespass and simple assault, assault inflicting serious injury, assault with a deadly weapon, and assault on a female by a person who is the spouse or former spouse of the victim or a person with whom the victim is living or has lived as if married.

This section broadens the provision to include the assaults listed above when they occur between persons who have a familial relationship as defined in G.S. 50B-1 (adds current or former household members, persons who have a child in common, persons who have been in a dating relationship, parent and child, or grandparent and grandchild), and adds the offenses of assault by pointing a gun and stalking if between those who have a familial relationship to those offenses for which a warrantless arrest may be made. Additionally, violation of a protective order is added as an offense for which a warrantless arrest may be made.

Section 7 makes sections 4 and 6 effective December 1, 1999 and applicable to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999.

HOUSE JUDICIARY I COMMITTEE

March 18, 1999

AGENDA

Senate Bill 197 – Safe Families Act
Senator Cooper

HOUSE JUDICIARY I COMMITTEE
March 18, 1999
Minutes

The House Judiciary I Committee met on Thursday, March 18, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Gray, Insko, Miller, Moore, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 197, AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE**, (Attachment II), would be discussed. He reminded the committee that the House companion, House Bill 199, was explained and discussed during the March 4 meeting.

Senator Cooper was recognized for further discussion of the bill and to explain changes that were made to the bill in the Senate. Senator Cooper pointed out that between 1991 and 1993, 586 women were murdered in North Carolina, and in 66.9% of those cases, a current or former intimate partner killed them. Of those killed, 2/3 were known to have been physically assaulted prior to the murder, and 83% were known to have been threatened by the man who eventually killed them. Senator Cooper stated that in a study that provided a state-by-state ranking of female homicide rates, North Carolina was 5th in the nation for the number of females murdered by males in single victim, single offender homicides. He noted that the North Carolina General Assembly has made many accomplishments with anti-stalking laws, increasing the penalty for assault on a female, allowing pro se actions without an attorney, to get protective orders in domestic violence, by funding shelter programs, and by including victims of domestic violence under the Victim's Rights Act. Senator Cooper stated that all of these things are important and necessary, but that the battle is incomplete until domestic violence is stamped out in North Carolina.

Senator Cooper stated that the Senate Judiciary Committee had made very few changes in the bill. He pointed out that Section 1, (b) (page 2, line 6) was eliminated. He stated that the rationale that the Task Force had for removing this language had been that it was being made a misdemeanor to violate a protective order. The Senate committee, however, thought that the officer should still have that pro-arrest policy and put the language in on page 4, line 22, under the provisions of violation of a protective order as a misdemeanor. Senator Cooper said that the committee felt that this was a power that the law enforcement still needed. He said that a change was also made in Section 7 with regard to the effective date, which states that Sections 1 and 2 of the bill will not become effective if funds are not appropriated or received by federal grant.

A summary of the bill, prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment III).

Representative Redwine asked for clarification regarding the funding that would be needed for implementation of the bill. Senator Cooper stated that the switch from the state data base to the national data base will cost money and that a proposed federal grant is suppose to provide the needed funding to the state. He further stated that if the grant does not come through, there might be an attempt to place the bill in the budget and change the effective date. He said that if no money comes, the bill would go forward without the statewide registry until funding comes to allow for the switch. Representative Redwine asked how much funding was required. Ms. Hayes, Committee Counsel, replied that she thought the amount was $300,000.

An amendment was offered by Representative Alexander, (Attachment IV), to amend Section 7 of the bill. Ms. Hayes stated that the amendment would change the effective date and was requested by the Division of Criminal Information (DCI) because of the timing of the federal funding and due to current ongoing projects. This amendment would affect the portion of the bill addressing the transfer to the national registry.

Representative Redwine expressed concern regarding the passing of legislation that might later need an appropriation for the implementation of the legislation, should the federal grant was not received.

Representative Blue moved that the words, "appropriated or," be removed from lines 4 and 6 as a perfecting amendment.

Upon vote of the committee, the perfecting amendment was adopted.

The amendment, as perfected, was before the committee. Upon vote of the members, the amendment was adopted.

An amendment proposed by the Department of Crime Control (DCI) and offered by Representative Alexander, (Attachment V), was before the committee. Representative Alexander moved adoption of the amendment. Ms. Hayes explained that the amendment would add the word "immediately" to existing language to provide guidance to the clerk's office to get the orders to the sheriff's office or the police in a reasonable amount of time. The amendment also provided that a sheriff would only enter out-of-state orders into the national registry if they had not been entered by the issuing state.

Mr. John Kennedy, Clerk of Superior Court, Wake County, commented briefly on the bill. He spoke in support of the bill, but expressed concern regarding the requirement for "immediate" notification by the clerk's office to the sheriff, and felt that a twenty-four hour time frame would work.

Mr. Eddie Caldwell, representing the North Carolina Sheriff's Association, stated that he shared the same concern with regard to the word "immediately," and suggested that "promptly" would be more acceptable to the sheriffs.

Representative Blue moved to perfect the amendment by changing the word "immediately" found on page 2,lines 31, 34, and 38 and on page 3, line8 and 10 of the amendment, and substituting the word, "promptly." Upon vote of the committee, the perfecting amendment was adopted.

The amendment, as perfected, was before the committee, and upon vote of the committee, was adopted.

Representative Ellis offered an amendment regarding making false statements to a law enforcement agency regarding a protective order, (Attachment VI), and moved its adoption.

Following committee discussion, the amendment was adopted.

Representative Alexander moved that the amendments be rolled into a House committee substitute for Senate Bill 197, that the committee substitute be given a favorable report, unfavorable to the Senate Committee Substitute, (Attachment VII). The motion carried. A copy of the House committee substitute is attached, (Attachment VIII).

The meeting was adjourned at 10:50 a. m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 18, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Walt Osborne	AOC
Harvin Freeman	Sentencing Commission
Annette Etheridge	Office of the Governor
Laura Costin	Governor's Page
Rhem Beck	DSS/DHHS
[illegible]	NCAR
Doug Logan	SBI
Leslie Starsoneck	Gov's. DV Task Force
LATISHA ALLEN	Chatham Co. Sheriff's Dept. D.V. coordinator
Jo Sanders	Family Violence & Rape Crisis Services P.O. Box 1105 Pittsboro NC 27312
Kit Russell	Family Violence & Rape Crisis Pittsboro
Clyde Wimmer	NCCADV
Carey Dix	Office of Juvenile Justice
Katie Dorsett	Dept of Admin.
Jonathan Williams	LCHR
B Simmons	NC Equity
John Rust	NCFPC
Greg Denning	VISITOR
Mr Kirby	Clerk of Superior Court - Wake Co.
Kathy Hodgin	Coalition for Family Peace
Martha Glaze	DOA
Deborah Ross	ACLU
James Peyton	House Sgt-At-Arms
Jean M Kellie	Moore & Van Allen
Kay in Hazel	Gov's office
A.B. Swindell	BFI Waste
JOHN SANDERS	-
Charles Verner	NCATL

VISITOR REGISTRATION SHEET

Judiciary I March 18, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Lawrence Davis	AAA of the Carolinas
2.	Rick Armstrong	WRAL TV
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 197
Judiciary I Committee Substitute Adopted 3/9/99
Third Edition Engrossed 3/10/99

Short Title: Safe Families Act. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-3(d) reads as rewritten:

"(d) The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order ~~onto the Division of Criminal Information Network~~ into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Section 2. G.S. 50B-4 reads as rewritten:

"**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General

Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

~~(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.~~

(c) ~~Valid~~ A valid protective ~~orders~~ order entered pursuant to this section shall be enforced by all North Carolina ~~law enforcement~~ law enforcement agencies without further order of the court.

(d) ~~Valid~~ A valid protective ~~orders~~ order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the ~~law enforcement~~ law enforcement agencies of North ~~Carolina.~~ Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall forward a copy to the sheriff of that county for entry into the National Crime Information Center registry pursuant to G.S. 50B-3(d)."

Section 2.1. G.S. 50B-4 reads as rewritten:

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(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized

under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

~~(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.~~

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Section 3. G.S. 1C-1702 reads as rewritten:

"**§ 1C-1702. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) "Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~"support~~ "child support order," as defined in ~~G.S. 52A-3(14) (The Uniform Reciprocal Enforcement of Support Act) or~~ G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a "custody decree," as defined in G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction ~~Act).~~ Act), or a domestic violence protective order as provided in G.S. 50B-4(d).

(2) "Judgment Debtor" means the party against whom a foreign judgment has been rendered.

(3) "Judgment Creditor" means the party in whose favor a foreign judgment has been rendered."

Section 4. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order a misdemeanor.**

(a) A person who knowingly violates a valid protective order entered pursuant to this Chapter or by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9)."

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medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

Section 6. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), ~~or 14-33(c)(2)~~ 14-33(c)(2), or 14-34 when the offense was committed by a person ~~who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.~~ with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a).

(3) Repealed by Session Laws 1991, c. 150."

Section 7. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date. Sections 1 and 2 of this act become effective only if funds are appropriated or received by federal grant to implement those Sections on or before December 1, 1999. Section 2.1 of this act becomes effective only if funds are not appropriated or received by federal grant to implement Sections 1 and 2 of this act by December 1, 1999.

ATTACHMENT III

North Carolina General Assembly
Legislative Services Office

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Room 5, Legislative Building
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(919) 733-2578

March 4, 1999

TO: Representative Joe Hackney, Chairman
House Judiciary I Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB199 – Safe Families Act

House Bill 199 enacts certain recommendations of the Governor's Task Force on Domestic Violence.

Section 1 requires the Division of Criminal Information (DCI) to enter any protective order issued or registered in North Carolina onto the National Criminal Information Center (NCIC) system to be placed into the National Protective Order Registry. North Carolina currently has it's own registry for protective orders, but that registry is not accessible nationally.

Section 2 contains two substantive changes. First, it deletes G.S. 50B-4(b), which required mandatory arrest by an officer for the purposes of setting up a contempt hearing for violation of a protection order by returning to the residence or by harassing, following, threatening, or interfering with the plaintiff. At the time of the enactment of G.S. 50B-4, the only method of "punishing" a defendant for violating the order was by contempt so the General Assembly provided a mechanism for arresting a defendant and setting bond for a contempt hearing for certain violations of the order. In 1997, the General Assembly enacted G.S. 50B-4.1 which made it a Class A1 misdemeanor to violate a protective order in any manner. (The maximum punishment for a Class A1 misdemeanor is greater than for contempt.) Now, the defendant who violates a protective order can be arrested and charged with a crime, which is the easier process for law enforcement officers and magistrates to apply. A plaintiff who wishes to enforce a violation of a protective order by a contempt proceeding may fill out a form motion before the clerk who will set up a contempt hearing before the district court judge and issue notice to the defendant. An accompanying change is set out in section 6 of this bill.

Second, this section amends the full faith and credit provisions of G.S. 50B-4(d) by specifying the procedure by which this State gives full faith and credit to out-of-state orders. It provides that orders are enforced without registration. A law enforcement officer may rely on a copy of the order and a statement by the victim that the order remains in effect in enforcing the order. Even though registration is not required, the person holding an order may register it by filing it

with the clerk of superior court. No notice is given to the defendant at the time of registration. The clerk sends a copy of the registered out-of-state order to the sheriff for entry into NCIC.

Section 3 removes domestic violence protective orders from coverage under G.S. 1C-1701 et. seq., the regular registration statute for out-of-state judgments, since G.S. 50B-4 will now specify the exclusive means for giving full faith and credit to domestic violence protective orders.

Additionally, a technical change is made to replace URESA (which was repealed in 1995) with UIFSA.

Section 4 makes it a Class A1 misdemeanor to violate in North Carolina a valid protective order issued in another state.

Section 5 amends G.S. 50B-5 to **eliminate** the current provision that allows law enforcement officers not to respond to a request for assistance in a domestic violence situation when multiple complaints have been made within a 48-hour period and the officer has reasonable cause to believe immediate assistance is not needed.

Section 6 G.S. 15A-401(b) allows a law enforcement officer to make a warrantless arrest for certain misdemeanors committed outside the officer's presence. Current law includes domestic criminal trespass and simple assault, assault inflicting serious injury, assault with a deadly weapon, and assault on a female by a person who is the spouse or former spouse of the victim or a person with whom the victim is living or has lived as if married.

This section broadens the provision to include the assaults listed above when they occur between persons who have a familial relationship as defined in G.S. 50B-1 (adds current or former household members, persons who have a child in common, persons who have bee in a dating relationship, parent and child, or grandparent and grandchild), and adds the offenses of assault by pointing a gun and stalking if between those who have a familial relationship to those offenses for which a warrantless arrest may be made. Additionally, violation of a protective order is added as an offense for which a warrantless arrest may be made.

Section 7 makes sections 4 and 6 effective December 1, 1999 and applicable to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 197

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

S197-ASA-009

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Third Edition

Representative _____

moves to amend the bill on page 5, lines 29-34,
by rewriting the lines to read:
"Section 7. Sections 1 and 2 of this act become effective February 1, 2000 only if funds ~~are appropriated~~ or received by federal grant to implement those Sections. Section 2.1 of this act becomes effective February 1, 2000 only if funds are not ~~appropriated or~~ received by federal grant to implement Sections 1 and 2 of this act. The remainder of this act becomes effective December 1, 1999."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 197

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

S197-ASA-010 Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []
Third Edition

Representative

moves to amend the bill on page 1, lines 6-11
by rewriting the lines to read:
"Section 1. G.S. 50B-3 reads as rewritten:
'**§ 50B-3. Relief.**
(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:
(1) Direct a party to refrain from such acts;
(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
(3) Require a party to provide a spouse and his or her children suitable alternate housing;
(4) Award temporary custody of minor children and establish temporary visitation rights;
(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
(6) Order either party to make payments for the support of a minor child as required by law;
(7) Order either party to make payments for the support of a spouse as required by law;
(8) Provide for possession of personal property of the parties;
(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party,
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
c. Otherwise interfering with the other party;

(10) Award costs and attorney's fees to either party;
(11) Prohibit a party from purchasing a firearm for a time fixed in the order;
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be immediately issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be immediately issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order ~~onto the Division of Criminal Information Network~~ into the National Crime Information Center registry and shall provide for access of such

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 197

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

S197-ASA-010 Page 3 of __

orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered.'"

and on page 2, lines 37-39,
by rewriting the lines to read:
"not be given to the defendant. Upon registration of the order, the clerk shall immediately forward a copy to the sheriff of that county. Unless the issuing state has already entered the order, the sheriff shall provide for immediate entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d)."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
~~**House Bill 199**~~
Senate Bill 197

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

S197-ASA-008 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Ellis

moves to amend the bill on page 4, lines 26-27,
by inserting between the lines a new section to read:
" Section 5. Chapter 50B of the General Statutes is amended by
adding a new section to read:
'**§50B-4.2. False statement regarding protective order a misdemeanor.**
A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe remains in effect shall be guilty of a Class 2 misdemeanor."

and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 197 A BILL TO BE ENTITLED AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.

☐ 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, u~~nfavorable 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 197
Judiciary I Committee Substitute Adopted 3/9/99
Third Edition Engrossed 3/10/99
Proposed House Committee Substitute S197-PCS2603-SA

Short Title: Safe Families Act. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

(1) Direct a party to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights;

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;
(7) Order either party to make payments for the support of a spouse as required by law;
(8) Provide for possession of personal property of the parties;
(9) Order a party to refrain from doing any or all of the following:
a. Threatening, abusing, or following the other party,
b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
c. Otherwise interfering with the other party;
(10) Award costs and attorney's fees to either party;
(11) Prohibit a party from purchasing a firearm for a time fixed in the order;
(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for ~~immediate~~ prompt entry of the order ~~onto the Division of Criminal Information Network~~ into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Section 2. G.S. 50B-4 reads as rewritten:

"**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized

under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

~~(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.~~

(c) ~~Valid~~ A valid protective ~~orders~~ order entered pursuant to this section shall be enforced by all North Carolina ~~law-enforcement~~ law enforcement agencies without further order of the court.

(d) ~~Valid~~ A valid protective ~~orders~~ order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the ~~law-enforcement~~ law enforcement agencies of North ~~Carolina.~~ Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county. Unless the issuing state has

already entered the order, the sheriff shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d)."

Section 2.1. G.S. 50B-4 reads as rewritten:

"**§ 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. ~~Said~~ This party may file and proceed with ~~such~~ that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

~~(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.~~

(c) ~~Valid~~ A valid protective ~~orders~~ order entered pursuant to this section shall be enforced by all North Carolina ~~law enforcement~~ law enforcement agencies without further order of the court.

(d) ~~Valid~~ A valid protective ~~orders~~ order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the ~~law enforcement~~ law enforcement agencies of North ~~Carolina.~~ Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though

registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall forward a copy to the sheriff of that county for entry into the Division of Criminal Information Network pursuant to G.S. 50B-3(d)."

Section 3. G.S. 1C-1702 reads as rewritten:

"**§ 1C-1702. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) "Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~"support~~ "child support order," as defined in ~~G.S. 52A-3(14) (The Uniform Reciprocal Enforcement of Support Act) or~~ G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a "custody decree," as defined in G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction ~~Act).~~ Act), or a domestic violence protective order as provided in G.S. 50B-4(d).

(2) "Judgment Debtor" means the party against whom a foreign judgment has been rendered.

(3) "Judgment Creditor" means the party in whose favor a foreign judgment has been rendered."

Section 4. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective order a misdemeanor.**

(a) A person who knowingly violates a valid protective order entered pursuant to this Chapter or by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9)."

Section 5. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-4.2. False statement regarding protective order a misdemeanor.**

A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe remains in effect shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 50B-5(a) reads as rewritten:

"(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local ~~law enforcement~~ law enforcement agency. The local ~~law enforcement~~ law enforcement agency shall

respond to the request for assistance as soon as ~~practicable; provided, however, a local law enforcement agency shall not be required to respond in instances of multiple complaints from the same complainant if the multiple complaints are made within a 48-hour period and the local law enforcement agency has reasonable cause to believe that immediate assistance is not needed.~~ practicable. The local ~~law enforcement~~ law enforcement officer responding to the request for assistance ~~is authorized to~~ may take whatever steps are reasonably necessary to protect the complainant from harm and ~~is authorized to~~ may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the ~~law enforcement~~ law enforcement officer ~~is authorized to~~ may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

Section 7. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), ~~or 14-33(c)(2)~~ 14-33(c)(2), or 14-34 when the offense was committed by a person ~~who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.~~ with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a).

(3) Repealed by Session Laws 1991, c. 150."

Section 8. Sections 1 and 2 of this act become effective February 1, 2000, only if funds are received by federal grant to implement those sections. Section 2.1

of this act becomes effective February 1, 2000, only if funds are not received by federal grant to implement Sections 1 and 2 of this act. The remainder of this act becomes effective December 1, 1999.

HOUSE JUDICIARY I COMMITTEE

March 23, 1999

AGENDA

House Bill 494 – Uniform Child-Custody Act
Representative Hackney

House Bill 495 – Family Law Arbitration Act
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
March 23, 1999
Minutes

The House Judiciary I Committee met on Tuesday, March 23, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Insko, Miller, Moore, Nesbitt, and Redwine. The Visitation Registration Sheet denotes visitors (Attachment I).

Chairman Hackney stated that House Bill 494, Uniform Child-Custody Act, which was on the meeting's agenda would not be heard during the meeting. He then recognized Mr. Lynn Burleson, a family law practitioner from Winston-Salem, and a former District Court Judge in Forsyth County. Mr. Burleson discussed background information which led to the drafting of **House Bill 495, AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57**, (Attachment II). He stated that more and more family law practitioners are interested in getting cases resolved as expeditiously and as cost effectively as possible. Mr. Burleson stated that in recent years, several attorneys had come to him and asked him to do an arbitration. Arbitration involves the hiring of someone who is an expert in a particular area of the law to make a decision; a sort of "hired judge process." It is a totally voluntary process and both parties must agree in order to conduct an arbitration. Mr. Burleson stated that some of the experiences he had with these cases led him to feel that there was a need for an arbitration statute as a part of Chapter 50. He contacted Professor George Walker, Wake Forest University Law School, who is an expert in areas of arbitration beyond family law to assist in drafting the language that became House Bill 495. Mr. Burleson pointed out the provisions of the bill which are outlined in a summary prepared by Ms. Susan Hayes, Committee Counsel, (Attachment III).

Dr. George Walker recognized to comment on the bill. He stated that the bill is a blend of the provisions from the Uniform Act of the General Statutes, and provisions from the International Commercial Arbitration and Conciliation Act, with the addition of special provisions for the review of child custody and child support issues. He stated that no substantive changes were made and that there is no difference in terms of the way that marital matters relating to child custody, child support and marital support are handled. He said that the only difference is that an arbitrator will make the final award. He noted the difference between arbitration and mediation is that in mediation the parties assist in resolving disputes, and in arbitration the parties pick, and pay for their own arbitrator.

Dr. Walker then noted some things that are different from the Uniform Act. He said that some things were added for the protection of the parties, such as the protection of assets, discovery, and provisions for costs.

Representative Hackney asked if the act governed who could be an arbitrator. Dr. Walker replied that it did not, but that usually it would be an attorney.

Additional information was distributed by the North Carolina Bar Association, (Attachment IV).

Representative Gardner expressed support for the bill, but asked if the bill would result in any cost to the state. Representative Hackney replied that a fiscal note has been requested. He noted that it was anticipated that the fiscal note would indicate savings to the state because some cases would be taken out of the judicial process. He added that the question would be

how much, if any, savings there would be to the state. He said that this would be an entirely private process and would not require any state resources.

Dr. Walker added that the only time there could be any cost would be if the parties wanted to have the award confirmed. The award would have to be entered by the Clerk of Court.

Representative Gardner questioned where such arbitrations would take place. Representative Hackney replied that the process could take place in a law office, in an unused courtroom, a bank boardroom, or any appropriate place.

Representative Miller expressed concern regarding the fact that parents would be allowed to establish a forum for the resolution of child custody and child support outside the scope of the court, and then be able to seek an order of the court to bind it.

Dr. Walker stated that right now, parties can agree by way of settlement on custody and support. He stated that if couples get into arbitration and cannot agree, they may ask for confirmation of the award, and the statute provides explicitly that the court can set it aside or change it under the same conditions precisely as in a litigated divorce. The only difference is with the decision-maker.

Considerable discussion followed. No action was taken on the bill, and the meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 23, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Dimmock	Attorney - Raleigh
George Wackon	Professor - Winston-Salem
Lynn Burleson	Attorney - Winston-Salem
Miriam Saxon	Admin. Office of the Courts
Scott Hannack	NCATL
B Summers	NC Equity
Bill Stoggin	NC BAR
John [illegible]	NCFRC
[illegible] Cromer	NCATL
A-A-Adams	Victim Advocate
[illegible]	NCBA
[illegible]	[illegible]
Laura Hartsell	NC Bar Association

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 495

Short Title: Family Law Arbitration Act. (Public)

Sponsors: Representatives Hackney; and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

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.

"Family Law Arbitration Act.

"**§ 50-41. Purpose; short title.**

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes and similar legislation, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

(b) This Article may be cited as the North Carolina Family Law Arbitration Act.

"**§ 50-42. Arbitration agreements made valid, irrevocable, and enforceable.**

(a) Before, during, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital

relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(b) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award under an agreement in which a provision stipulates that this Article does not apply.

"**§ 50-43. Proceedings to compel or stay arbitration.**

(a) On a party's application showing an agreement under G.S. 50-42 and an opposing party's refusal to arbitrate, the court shall order the parties to proceed with the arbitration. If an opposing party denies existence of an agreement to arbitrate, the court shall proceed summarily to determine whether a valid agreement exists and shall order arbitration if it finds for the moving party; otherwise, the application shall be denied.

(b) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to go to arbitration.

(c) If an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a court of competent jurisdiction, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

(d) The court shall order a stay in any action or proceeding involving an issue subject to arbitration if an order or an application for arbitration has been made under this section. If the issue is severable, the stay may be with respect to that specific issue only. When the application is made in an action or proceeding, the order compelling arbitration shall include a stay of the court action or proceeding.

(e) An order for arbitration shall not be refused and a stay of arbitration shall not be granted on the ground that the claim in issue lacks merit or because grounds for the claim have not been shown.

"**§ 50-44. Interim relief and interim measures.**

(a) In the case of an arbitration where arbitrators have not yet been appointed, or where the arbitrators are unavailable, a party may seek interim relief directly from a court as provided in subsection (c) of this section. Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases a party shall seek interim measures as described in subsection (d) of this section from the arbitrators and has no right to seek interim relief from a court, except that a party to an arbitration governed by this Article may request from the court enforcement of the arbitrators' order granting interim measures.

(c) In connection with an agreement to arbitrate or a pending arbitration, the court may grant under subsection (a) of this section any of the following:

(1) An order of attachment or garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;
(4) Appointment of a receiver;
(5) Delivery of money or other property into court;
(6) Notice of lis pendens;
(7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(i), or 50-20(il); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes;
(8) Any relief permitted by federal law or treaties to which the United States is a party; or
(9) Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

(d) The arbitrators may, at a party's request, order any party to take any interim measures of protection that the arbitrators consider necessary in respect to the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (c) of this section. The arbitrators may require any party to provide appropriate security, including security for costs as provided in G.S. 50-51, in connection with interim measures.

(e) In considering a request for interim relief or enforcement of interim relief, the court shall give preclusive effect to any finding of fact of the arbitrators in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or granted.

(f) Where the arbitrators have not ruled on an objection to their jurisdiction, the court shall not grant preclusive effect to the arbitrators' findings until the court has made an independent finding as to the arbitrators' jurisdiction. If the court rules that the arbitrators do not have jurisdiction, the application for interim relief shall be denied.

(g) Availability of interim relief or interim measures under this section may be limited by the parties' prior written agreement, except for relief pursuant to G.S. 7B-502, 7B-1902, 50-13.5(d), 50-20(h), 50A-25, 50B-3, Chapter 52C of the General Statutes; federal law; or treaties to which the United States is a party, whose purpose is to provide immediate, emergency relief or protection.

(h) Arbitrators who have cause to suspect that any child is abused or neglected shall report the case of that child to the director of the department of social services of the county where the child resides or, if the child resides out-of-state, of the county where the arbitration is conducted.

(i) A party seeking interim measures, or any other proceeding before the arbitrators, shall proceed in accordance with the agreement to arbitrate. If the agreement to arbitrate does not provide for a method of seeking interim measures, or for other proceedings before the arbitrators, the party shall request interim measures or a hearing by notifying the arbitrators and all other parties of the request. The arbitrators shall notify the parties of the date, time, and place of the hearing.

"§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.

(a) Unless the parties agree otherwise, a single arbitrator shall be chosen by the parties to arbitrate all matters in dispute.

(b) If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. The agreement may provide for appointing one or more arbitrators. Upon the application of a party the court shall appoint arbitrators in any of the following situations:

(1) The method agreed upon by the parties in the arbitration agreement fails or for any reason cannot be followed.

(2) An arbitrator who has already been appointed fails or is unable to act and a successor has not been chosen by the parties.

(3) The parties cannot agree on an arbitrator.

(c) Arbitrators appointed by the court have all the powers of those arbitrators specifically named in the agreement. In appointing arbitrators a court shall consult with prospective arbitrators as to their availability and shall refer to each of the following:

(1) The positions and desires of the parties.

(2) The issues in dispute.

(3) The skill, substantive training, and experience of prospective arbitrators in those issues, including their skill, substantive training, and experience in family law issues.

(4) The availability of prospective arbitrators.

(d) The parties may agree to employ an established arbitration institution to conduct the arbitration. If the agreement does not provide a method for appointment of arbitrators and the parties cannot agree on an arbitrator, the court may appoint an established arbitration institution the court considers qualified in family law arbitration to conduct the arbitration.

(e) The parties may agree on rules for conducting the arbitration. If the parties cannot agree on rules for conducting the arbitration, the arbitrators shall select the rules for conducting the arbitration after hearing all parties and taking particular reference to model rules developed by arbitration institutions or similar sources. If the arbitrators cannot decide on rules for conducting the arbitration, upon application by a party, the court may order use of rules for conducting the arbitration, taking particular reference to model rules developed by arbitration institutions or similar sources.

(f) Arbitrators and established arbitration institutions, whether chosen by the parties or appointed by the court, have the same immunity as judges from civil liability for their conduct in the arbitration.

(g) 'Arbitration institution' means any neutral, independent organization, association, agency, board, or commission that initiates, sponsors, or administers arbitration proceedings, including involvement in appointment of arbitrators.

(h) The court may award costs, as provided in G.S. 50-51(f), in connection with applications and other proceedings under this section.

"§ 50-46. Majority action by arbitrators.

The arbitrators' powers shall be exercised by a majority unless otherwise provided by the arbitration agreement or this Article.

"§ 50-47. Hearing.

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than five days before the hearing. Appearance at the hearing waives any claim of deficiency of notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. Upon application of a party, the court may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(c) All the arbitrators shall conduct the hearing, but a majority may determine any question and may render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(d) Upon request of any party or at the election of any arbitrator, the arbitrators shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrators shall decide how the cost of the record will be apportioned.

"§ 50-48. Representation by attorney.

A party has the right to be represented by counsel at any proceeding or hearing under this Article. A waiver of representation prior to a proceeding or hearing is ineffective.

"§ 50-49. Witnesses; subpoenas; depositions; court assistance.

(a) The arbitrators have the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents, and other evidence. Subpoenas issued by the arbitrators shall be served and, upon application to the court by a party or the arbitrators, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

(b) On the application of a party and for use as evidence, the arbitrators may permit depositions to be taken in the manner and upon the terms the arbitrators designate.

(c) All provisions of law compelling a person under subpoena to testify apply.

(d) The arbitrators or a party with the approval of the arbitrators may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B, and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence, and may impose sanctions for failure to comply with its orders.

(e) A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

"**§ 50-50. Consolidation.**

(a) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, they may agree upon common arbitrators to hear all arbitrations, and these arbitrations shall proceed as consolidated.

(b) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, the court, upon application by a party, may do any of the following:

(1) Order the arbitrations consolidated on terms the court considers just and necessary;

(2) If all parties cannot agree on arbitrators for the consolidated arbitration, appoint arbitrators as provided by G.S. 50-45; and

(3) If all parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make other orders it considers necessary.

"**§ 50-51. Award; costs.**

(a) The award shall be in writing, dated and signed by the arbitrators joining in the award, with a statement of the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(b) Unless the parties agree otherwise, the award shall state the reasons upon which it is based.

(c) Unless the parties agree otherwise, the arbitrators may award interest as provided by law.

(d) The arbitrators in their discretion may award specific performance to a party requesting an award of specific performance when that would be an appropriate remedy.

(e) Unless the parties agree otherwise, the arbitrators may not award punitive damages. If arbitrators award punitive damages, they shall state the award in a record and shall specify facts justifying the award and the amount of the award attributable to punitive damages.

(f) Costs.

(1) Unless the parties otherwise agree, awarding of costs of an arbitration shall be in the arbitrators' discretion.

(2) In making an award of costs, the arbitrators may include any or all of the following as costs:

a. Fees and expenses of the arbitrators, expert witnesses, and translators;

b. Fees and expenses of counsel and of an institution supervising the arbitration, if any;

c. Any other expenses incurred in connection with the arbitration proceedings;

d. Sanctions awarded by the arbitrators or the court, including those provided by N.C.R. Civ. P. 11 and 37; and

e. Costs allowed by Chapters 6 and 7A of the General Statutes.

(3) In making an award of costs, the arbitrators shall specify each of the following:

a. The party entitled to costs;

b. The party who shall pay costs;

c. The amount of costs or method of determining that amount; and

d. The manner in which costs shall be paid.

(g) An award shall be made within the time fixed by the agreement. If no time is fixed by the agreement, the award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party.

"§ 50-52. Change of award by arbitrators.

On a party's application to the arbitrators or, if an application to the court is pending under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court under the conditions ordered by the court, the arbitrators may modify or correct the award upon grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 50-55, or clarify the award. The application shall be made within 20 days after delivery of the award to the opposing party, stating that the opposing party must serve objections to the application, if any, within 10 days from notice. An award modified or corrected under this section is subject to the provisions of G.S. 50-53 through G.S. 50-56.

"§ 50-53. Confirmation of award.

Upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-54. Vacating an award.

(a) Upon a party's application, the court shall vacate an award for any of the following reasons:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing the rights of a party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon a showing of sufficient cause for the postponement, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of G.S. 50-47;

(5) There was no arbitration agreement, the issue was not adversely determined in proceedings under G.S. 50-43, and the party did not participate in the arbitration hearing without raising the objection. The fact that the relief awarded either could not or would not be granted by a court is not a ground for vacating or refusing to confirm the award;

(6) The award for child support or child custody constituted a gross abuse of discretion by the arbitrators in rendering the award;

(7) The award included punitive damages, and the court determines that the award for punitive damages is clearly erroneous; or

(8) If the parties contract in an arbitration agreement for judicial review of errors of law in the award, the court shall vacate the award if the arbitrators have committed an error of law prejudicing a party's rights.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. If the application is predicated on corruption, fraud, or other undue means, it shall be made within 90 days after these grounds are known or should have been known.

(c) In vacating an award on grounds other than stated in subdivision (5) of subsection (a) of this section, the court may order a rehearing before arbitrators chosen as provided in the agreement, or in the absence of a provision regarding the appointment of arbitrators, by the court in accordance with G.S. 50-45. The time within which the agreement requires an award to be made applies to the rehearing and commences from the date of the order.

(d) If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award and may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"**§ 50-55. Modification or correction of award.**

(a) Upon application made within 90 days after delivery of a copy of an award to an applicant, the court shall modify or correct the award where at least one of the following occurs:

(1) There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them, and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify or correct the award to effect its intent and shall confirm the award as modified or corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(d) The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-56. Modification of award for alimony, postseparation support, child support, or child custody based on substantial change of circumstances.

(a) A court or the arbitrators may modify an award for postseparation support, alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S. 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this section.

(b) Unless the parties have agreed that an award for postseparation support or alimony shall be nonmodifiable, an award by arbitrators for postseparation support or alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be modified if a court order for alimony or postseparation support could be modified pursuant to G.S. 50-16.9.

(c) An award by arbitrators for child support or child custody may be modified if a court order for child support or child custody could be modified pursuant to G.S. 50-13.7.

(d) If an award for modifiable postseparation support or alimony, or an award for child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the parties' agreement these matters may be submitted to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(e) If an award for modifiable postseparation support or alimony, or an award for child support or child custody has been confirmed pursuant to G.S. 50-53, upon the parties' agreement and joint motion the court may remit these matters to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(f) Except as otherwise provided in this section, the provisions of G.S. 50-55 apply to modifications or corrections of awards for postseparation support, alimony, child support, or child custody.

"§ 50-57. Orders or judgments on award.

Upon granting an order confirming, modifying, or correcting an award, an order or judgment shall be entered in conformity with the order and docketed and enforced as any other order or judgment. The court may award costs, as provided in G.S. 50-51(f), of the application and of proceedings subsequent to the application and disbursements.

"§ 50-58. Applications to the court.

Except as otherwise provided, an application to a court under this Article shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for making and hearing motions in civil actions. Unless the parties agree

otherwise, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions.

"**§ 50-59. Court; jurisdiction.**

The term 'court' means a court of competent jurisdiction of this State. Making an agreement in this State described in G.S. 50-42 or any agreement providing for arbitration in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

"**§ 50-60. Appeals.**

(a) An appeal may be based on failure to comply with the procedural aspects of this Article. An appeal may be taken from any of the following:

(1) An order denying an application to compel arbitration made under G.S. 50-43;

(2) An order granting an application to stay arbitration made under G.S. 50-43(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment entered pursuant to provisions of this Article.

(b) Unless the parties contract in an arbitration agreement for judicial review of errors of law as provided in G.S. 50-54(a), a party may not appeal on the basis that the arbitrator failed to apply correctly the law under Chapters 50, 50A, 52B, or 52C of the General Statutes.

(c) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

"**§ 50-61. Article not retroactive.**

This Article applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

"**§ 50-62. Construction; uniformity of interpretation.**

Certain provisions of this Article have been adapted from the Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes."

Section 2. G.S. 1-567.57(b) reads as rewritten:

"(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, ~~on~~ upon application by ~~one party with the consent of all the other parties to those arbitration agreements, may:~~ a party, may do any of the following:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary."

Section 3. This act becomes effective October 1, 1999.

HOUSE BILL 495:
Family Law Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	March 23, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 495 enacts a new Family law Arbitration Act as Article 3 of Chapter 50 of the General Statutes. The bill is a recommendation of the North Carolina Bar Association's Dispute Resolution and Family Law Sections Joint Committee.***

BILL ANALYSIS:

The Family Law Arbitration Act would permit, by agreement of all parties, the binding arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support.

The agreement must be made in writing, and may be made before, during, or after the marriage. The act is modeled on the Uniform Arbitration Act and the International Commercial Arbitration and Conciliation Act, with some added provisions.

Besides provisions regarding the manner in which the arbitrators are chosen and the procedure of the arbitration itself, the act contains provisions for interim relief and measures pending the outcome of the arbitration, as well as procedures for court enforcement of arbitrator ordered interim measures. There are also provisions regarding the vacation, correction, or modification of arbitration awards by the court under specific circumstances, and a provision for modification of awards of postseparation support, alimony, child support, or child custody in the same situations that state law allows modification of such orders currently.

The new provisions in Chapter 50 apply to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that the provisions shall apply to agreements dated before October 1, 1999.

The bill also amends G.S. 1-567.57(b) (international arbitration) to allow a court to take specified actions with respect to consolidation of arbitrations upon application of any party when the parties have agreed in their respective arbitration agreements or otherwise, to consolidation of arbitrations.

This bill is effective October 1, 1999.

NORTH CAROLINA
1899–1999
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House Bill 495 Family Law Arbitration Act

What is the current law in our state?
Currently, a couple who has sought a divorce in the courts can choose to have related issues such as equitable distribution (division of the marital property) decided by arbitration. Arbitration is an alternative to litigation that parties may choose because it affords them more privacy for the discussion of family issues. When parties choose the option of arbitrating their case, they have the freedom to select the attorney or attorneys they would like to have serve as arbitrator and can schedule to hold the arbitration meetings at mutually convenient times. This scheduling freedom enables busy people to meet at times other than when District Court is in session.

Why does North Carolina need HB 495?
The district court case of *Crutchley v. Crutchley* (1982) held that North Carolina's current arbitration law makes arbitration of property issues binding, but arbitrated decisions of child custody and child support are not binding--*even if both parties have agreed to be bound by the arbitrator's decision.* In some North Carolina District courts, the priority docket of criminal and other cases causes the resolution of family law issues to be delayed and drawn out.

Would HB 495 force parties to arbitrate?
No. The choice of using arbitration instead of litigating in a courtroom would remain voluntary, requiring the agreement of both parties, just as it is a voluntary option under current law. Parties are always free to choose to litigate, mediate or arbitrate their issues.

Child support and custody are important issues--does arbitration offer the same protections found in the current law? Yes.

- The selected arbitrator would be required to make findings of fact and conclusions of law to support his decision. Parties could file the arbitrator's award with the court so that it could be enforced like any other order or judgment rendered by a court.
- HB 495 enables a judge to reject the arbitrator's final decision award for child support and custody if the award "constitutes a gross abuse of discretion."
- Section 16 of this bill indicates that *a judge can modify any arbitrated award for custody, child support, or alimony in the same situations where current North Carolina allows judicial modification.* (Examples: when a party petitions the court to modify the original order because child support needs have changed or a custodial parent's fitness has changed.)

The North Carolina Bar Association Recommends Passage of House Bill 495.

Laura E. Hartsell, Assistant Director of Governmental Affairs
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HOUSE JUDICIARY I COMMITTEE

March 25, 1999

AGENDA

Senate Bill 76 – Traffic Enforcement Statistics
Senator Ballance

House Bill 111 Traffic Enforcement Statistics
Representative Sutton

HOUSE JUDICIARY I COMMITTEE
March 25, 1999
Minutes

The House Judiciary I Committee met on Thursday, March 25, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Miller, Nesbitt, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors

Chairman Hackney announced that the committee would hear an explanation from Senator Ballance, of **Senate Bill 76, AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT,** (Attachment II). He further noted that Representative Sutton, the sponsor of the companion bill, **House Bill 111**, (Attachment III), was also present.

Senator Ballance was recognized to explain the bill. He stated that Senate Bill 76 passed the Senate on March 9, 1999 by a vote of 37-8, and that the bill has the support of Secretary Moore, Crime Control and Public Safety, and Colonel Richard Holden of the State Highway Patrol. He stated that these two agencies make up 99% of the traffic enforcement stops that are addressed by the bill. He further stated that he felt that the citizens of North Carolina support the concept that persons should not be stopped by law enforcement based on the color of their skin. He noted that the bill does not accuse any agency of stopping people because of their race, and stated that it was against the policy of these agencies to do so, but that this does not mean it is not occurring. Senator Ballance stated that in some circumstances, people are being profiled. He explained that being profiled meant that an officer would look at the color of the driver of a vehicle and based upon that, would find a reason to stop the person to make an inquiry. He related stories involving two lawsuits in the state of Maryland where people had been stopped based upon their race. He stated that the settlement of the lawsuits required the keeping of statistics. He stated that two New Jersey troopers have also testified that they had been coached to make race-based profile stops to increase their criminal arrests. Senator Ballance stated that there is some evidence that the theory is put forth in law enforcement training, that blacks are more likely to be carrying drugs. He noted that statistics show that regardless of race, the percentage of people carrying drugs is the same. However, he noted that if more blacks are being stopped and searched, then more drugs will be found on blacks. He said that in one study, out of one thousand people who were stopped and searched, seven hundred were African Americans.

Senator Ballance stated that the bill would require the Division of Criminal Information of the Attorney General's Office to collect and maintain information regarding traffic law enforcement by State law enforcement officers. It would also require that a report be made to the General Assembly and Governor. He noted that there were two proposed amendments to the bill.

A copy of a summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment IV).

Representative Ronnie Sutton was recognized. He reiterated that no agency was being accused of profiling based on race. He noted that his county is more that 60% minority, with a heavy Native American and black population and that he has strong suspicions that over time, these events do happen. He noted that he would be satisfied if data, collected over a period of time, shows that profiling is not taking place.

Mr. Joe Stewart, Department of Crime Control and Public Safety was recognized and spoke in support of the bill. He said that his department had already begun to work with the Division of Criminal Investigation to determine the manner in which to gather the information and would conduct a thorough evaluation of other policies and procedures and the manner in which stops are conducted. Mr. Stewart stated that the Highway Patrol takes this matter very seriously and looks forward to working with the legislature in providing this information.

Mr. Bryan E. Beaty, Department of Justice, Office of the Attorney General, was recognized to comment on the bill. He noted that he had been working with Senator Ballance and Representative Sutton regarding concerns the department had with regard to carrying out the requirements of the bill.

Chairman Hackney asked if there was a fiscal note for the bill. Senator Ballance replied that a fiscal note had not been prepared in the Senate. He said that they were of the opinion that this could be accomplished with available funds. Chairman Hackney asked if the Department of Crime Control and Public Safety and the Department of Justice were in agreement with this. Mr. Stewart responded that they felt it was possible to do some statistical information utilizing mobile data terminals that would minimize the impact. He said that there might be some additional strain on resources to accomplish this, but that they feel they can get it done with what they have. Mr. Beaty stated that the Division of Criminal Information had been working with the fiscal research staff regarding the requirements for their department and will be able to better respond when they can determine exactly what the statute will require, but that there would be some cost involved.

Representative Nesbitt offered an amendment to remove the phrase "under forfeiture laws" from page 2, line 37, (Attachment V). Chairman Hackney stated that the amendment makes the language having to do seizure more generic. Upon vote of the committee, the amendment was adopted.

A second amendment was offered by Representative Nesbitt, (Attachment VI), to amend the bill on page 2, line 22 by rewriting the line to read, "identifying characteristics of the drivers stopped and any passengers, including". Senator Ballance stated that some evidence exists that interracial couples are sometimes stopped, and that vehicles with two black males are also an indication for a stop. He said he would like to have the statistics reflect additional people in the vehicle. Representative Nesbitt moved adoption of the amendment.

Representative Blue asked if one gets away from the race issue, is there any impact on the effectiveness of law enforcement by setting profiles for conduct that the patrol thinks may be suspicious. Mr. Stewart responded that the only acceptable characteristic that a trooper can follow is an observed violation of motor vehicle law. He noted that there has been concern expressed about the work of the criminal interdiciton team, which is a speciality unit within the highway patrol of twelve troopers. He said that in an attempt to identify drug trafficking this team intensifies the level of their traffic stops, but that they are all premised on an observed violation of motor vehicle law and that no other factors are allowed to be considered. He noted that a supervisor reviews a troopers duty log over the course of a week, and that any strange skewing of biostatistical information would become apparent immediately. The supervisor would then address the situation with the trooper. He noted that for the large part, this bill addresses those stops that do not result in written warnings or citation, and would not impede law enforcement function.

Representative Nesbitt expressed concern for citizens who are searched and have their cars ransacked on the side of the road, and noted that he would like to know how many of such

searches render guilty persons. He further noted that an amendment may be needed to get to the purpose of the search.

Mr. Stewart stated the criminal interdiction team of the highway patrol focuses on stopping people for observed violations and that over the life span of this team, drugs have been found in vehicles that were searched in about one out of every five times. He noted that the team asks for consensual searches and most times consent is given.

Representative Nesbitt expressed concern about the remaining four out of the five persons who are being stopped and searched.

Representative Ellis questioned whether a trooper might consider characteristics of a vehicle, such as the age of the vehicle, darkly tinted windows, etc. in deciding to make a stop. Mr. Stewart replied that those are not factors that are the policy of the highway patrol when deciding to make a stop. Representative Ellis asked if the highway patrol had specific profile criteria. Mr. Stewart replied that after a stop is made, there are certain indicators that troopers try to identify such as exceptional nervousness on the part of the drivers and passengers, different versions of stories of destination, etc., but that an observed violation of vehicle law is the only criteria for stopping a vehicle.

Representative Blue asked if any searches are conducted that do not have probable cause. Mr. Stewart replied that the trooper must be able to articulate probable cause in the search report.

Representative Clary spoke in opposition to the amendment and noted that it was an invasion of a person's privacy to indicate passengers in a vehicle.

Mr. Bill Alexander, North Carolina Police Benevolent Association noted concern for the amendment.

Representative Nesbitt withdrew the amendment.

Ms. Deborah Ross, American Civil Liberties Union, was recognized. She spoke regarding the keeping of statistics of the race of persons being searched.

Chairman Hackney stated that she might work on wording for a possible amendment to that effect.

An amendment was drafted at the request of the Chairman Hackney, (Attachment VII). He asked for committee comment regarding the amendment. Senator Ballance stated that he had no problem with the amendment.

Representative Alexander moved adoption of the amendment.

Representative Miller, Ellis, and Thompson spoke regarding the availability of funding to carry out the mandate of the legislation. Representative Thompson noted that criminal record checks for nursing home workers is far behind.

Mr. Douglas H. Kappler, State Bureau of Investigation, Division of Criminal Investigation, stated that checks are being handled more expediently. He further noted that DCI was working with Fiscal Research to define the scope of the bill. He said that any data collection effort would have some initial start-up costs and those costs are being determined.

Chairman Hackney stated that the bill would be placed on an upcoming meeting and that a fiscal note should be available to the committee by that time to better assess the needed appropriations to carry out the mandate of the bill.

Representative Thompson requested additional information regarding the time required for criminal checks.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 25, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Melissa Lovell	DOJ
Bryan E. Beatty	DOJ
Doug Kapplea	DOJ/SBI
EDDIE CALDWELL	HMeCC&CJ P.A.
John Phelps	NCLM
Dave Hoover	SABDMJ
Bill Alexander	NCPBA
MICHELLE ARRINGTON	ACLU-NC
Deborah Ross	ACLU-NC
Joe Stewart	Dept of CCPS
Barbara Zeigler	DMV
[illegible]	DMV ENFORCEMENT
[illegible]	DMV
Annette Ethridge	Office of Governor
Ken Hurley	"
Ruth Sappie	NCDOT
Debra Melvin	NCASA
Tanya Burton	NCASA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 76
Judiciary II Committee Substitute Adopted 3/4/99

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-10 reads as rewritten:

"**§ 114-10. Division of Criminal Statistics.**

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests,

trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(2a) To collect, correlate, and maintain the following information regarding traffic law enforcement by State law enforcement officers:

a. The number of drivers stopped for routine traffic enforcement by State law enforcement officers and whether or not a citation or warning was issued;

b. Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;

c. The alleged traffic violation that led to the stop;

d. Whether a search was instituted as a result of the stop;

e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched;

f. The legal basis for the search, including whether consent was obtained and whether there was probable cause or reasonable suspicion to suspect a crime;

g. Whether any contraband was found and the type and amount of any such contraband;

h. Whether any written citation or any oral or written warning was issued as a result of the stop;

i. Whether an arrest was made as a result of either the stop or the search;

j. Whether any property was seized under forfeiture laws, with a description of that property;

k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

m. Whether any injuries resulted from the stop; and

n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.

The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article."

Section 2. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 111*

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors: Representatives Sutton, Hardaway, Hackney; Barefoot, Braswell, Cox, Earle, Kinney, Luebke, Wainwright, and Yongue.

Referred to: Judiciary I.

February 18, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-10 reads as rewritten:

"**§ 114-10. Division of Criminal Statistics.**

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests,

trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(2a) To collect, correlate, and maintain the following information regarding traffic law enforcement by State law enforcement officers:

a. The number of persons stopped for routine traffic enforcement by State law enforcement officers, and whether or not a citation or warning was issued;

b. Identifying characteristics of the persons stopped, including the race or ethnicity, approximate age, and gender;

c. The alleged traffic violation that led to the stop;

d. Whether a search was instituted as a result of the stop;

e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched;

f. The legal basis for the search, including whether consent was obtained and whether there was probable cause or reasonable suspicion to suspect a crime;

g. Whether any contraband was found and the type and amount of any such contraband;

h. Whether any oral or written citation or warning was issued as a result of the stop;

i. Whether an arrest was made as a result of either the stop or the search;

j. Whether any property was seized under forfeiture laws, with a description of that property;

k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

m. Whether any injuries resulted from the stop; and

n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article."

Section 2. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date.

SENATE BILL 76:
Traffic Enforcement Statistics

BILL ANALYSIS

Committee: House Judiciary I
Date: March 25, 1999
Version: 2nd Edition

Introduced by: Senator Ballance
Summary by: Susan L. Hayes
Committee Counsel
Brenda Carter, Staff Attorney

SUMMARY: ***Senate Bill 76 requires the Division of Criminal Statistics to collect and maintain statistics on traffic law enforcement, even when no arrest is made or citation issued.***

CURRENT LAW: Under G.S. 20-183, State law-enforcement officers are authorized to stop any motor vehicle upon the highways of the State for the purpose of determining whether the vehicle is being operated in violation of any of the provisions of the Motor Vehicles Act, and they have the power to arrest on sight or upon warrant any person found violating the provisions of the Act. The term "State law-enforcement officers" as used in Senate Bill 76 would primarily affect the Highway Patrol, since they have specific statutory authority under G.S. 20-188 to "regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State." The Highway Patrol also has the authority throughout the State of any police officer in respect to making arrests for any crimes committed in their presence, along with authority to make arrests for any crime committed on any highway. They may also arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

BILL ANALYSIS: Senate Bill 76, introduced by Senator Ballance, would require the Division of Criminal Statistics to collect and maintain specified information regarding traffic law enforcement by State law enforcement officers. The information would include the number of persons stopped, identifying characteristics of the driver including race, age and gender, the alleged traffic violation that was the basis for the stop and whether a search was instituted. In instances where a search is instituted, the information will include the legal basis for the search and a description of the nature of the search, the results of the search, and a description of any physical resistance by the driver or force by the officer.

Under existing law, the Division of Criminal Statistics has the responsibility to provide the Governor and the General Assembly with the information it collects biennially, or more often if required by the Governor. The responsibilities with regard to the collection of information regarding traffic enforcement would apply to law enforcement actions occurring on or after October 1, 1999.

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ASA-013

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative Nesbitt

moves to amend the bill on page 2, line 37,
by deleting the phrase "under forfeiture laws".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ASA-012

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative Nesbitt

moves to amend the bill on page 2, line 22,
by rewriting the line to read:
" b. Identifying characteristics of the drivers
stopped and any passengers, including".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

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

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 23-24,

by rewriting the lines to read:

"Section 2. The provisions of this act shall be implemented within existing funds of State law enforcement agencies and the Division of Criminal Statistics.

Section 3. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

HOUSE JUDICIARY I COMMITTEE

March 30, 1999

AGENDA

House Bill 57 - Motor Vehicle Occupant Restraints
Representative Alexander

House Bill 111 - Traffic Enforcement Statistics
Representative Sutton

Senate Bill 76 - Traffic Enforcement Statistics
Senator Ballance

HOUSE JUDICIARY I COMMITTEE
March 30, 1999
Minutes

The House Judiciary I Committee met on Tuesday, March 30, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Clary, Insko Miller, Nesbitt, and Moore. Visitors are denoted by the Visitation Registration Sheet, (Attachment I).

Senator Ballance was recognized to continue discussion of **Senate Bill 76, AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT**, (Attachment II). The explanation of this bill is found in the minutes of the March 25, 1999 meeting.

An amendment was offered by Representative Nesbitt stating that the General Assembly would not be obligated to make any appropriation in implementing the provisions of the act, and that each department or agency to which the act applies shall implement the provisions of the act with funds otherwise appropriated, (Attachment :III). He moved adoption of the amendment. Following a brief comment by Mr. Tom Covington, Director, Fiscal Research Division, the amendment was adopted.

Representative Nesbitt offered a second amendment, (Attachment IV), and was recognized to explain the amendment. Representative Nesbitt stated that the amendment was an attempt to gather more information about searches of motorists. Representative Nesbitt moved adoption of the amendment. Senator Ballance stated that he was comfortable with the proposed amendment. Representative Nesbitt moved adoption of the amendment. The amendment was adopted.

Chairman Hackney stated that Representative Ellis had requested an amendment, and that the amendment had been prepared, but that due to the death of his father, Representative Ellis was unable to attend the meeting. He stated that the amendment would amend the bill on page 2, lines 23-24 by inserting a new subdivision to read, "the vehicle make, model and year".

Ms. Susan Hayes, Committee Counsel stated that Representative Ellis wanted the make and model to be recorded not only when a citation was issued, but also when a vehicle was stopped and no citation was issued. She said that she thought that his intent was to see if the older cars were being pulled more that newer, fancier ones, or vice versa.

Chairman Hackney asked if any member of the committee would like to offer the amendment in Representative Ellis' absence. Representative Nesbitt stated that he would offer the amendment, but if the amendment was not adopted, he felt that the bill should be held over until Representative Ellis could be present and advocate for it.

Representative Sutton stated that he would have no opposition to the amendment being offered on the floor.

Mr. Joe Stewart, Department of Crime Control and Public Safety, was recognized and commented on the proposed amendment. He stated that he did not see value in the amendment and stated that the highway patrol does nothing to profile a vehicle by make or model.

Chairman Hackney stated that he sensed that the committee did not wish to adopt the proposed amendment.

Following committee discussion, Representative Nesbitt moved that the adopted amendments be rolled into a House committee substitute, that the House committee substitute be given a favorable report, unfavorable as to original bill. The motion carried, (Attachment V). A copy of the House Committee Substitute is attached, (Attachment VI).

Representative Alexander was recognized to explain **House Bill 57, AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY,** (Attachment VII). Representative Alexander stated that the bill is a bill about safety. She explained that the bill would require seat occupants sixteen years of age or older to wear seatbelts, and that drivers and passengers caught without a fastened seatbelt are subject to a $25 penalty. She stated that a driver who is not wearing a seatbelt would be assessed two drivers' license points, but not insurance points. Representative Alexander said that the bill clarifies existing law stating that a person found responsible for transporting a child under 12 years of age in an open pickup is subject to a $25 penalty. The bill requires that children under the age of 5 years old and under 40 pounds must be in a child safety seat. All other children must be in seat belts. The bill would require a child under the age of sixteen in a car equipped with passenger airbags to be in the back seat of the car unless a child restraint system is designed for use with airbags, or the child is in a properly fitted shoulder and seat belt.

A copy of the bill summary prepared by Ms. Hayes is attached, (Attachment VIII)

Dr. E. Stephen Edwards, a Raleigh pediatrician and President of the Southeastern Division of the American Academy of Pediatrics, was recognized and spoke in support of the bill.

Mr. Allen H. Perry, Governor's Advocacy Council for Persons With Disabilities, was recognized and spoke in support of the bill.

Mr. Joe Parker, Director, Governor's Highway Safety Program was also recognized and spoke in support of the bill.

Mrs. Kathy Carroll, Greensboro, North Carolina addressed the Committee regarding an accident that took the life of her daughter, Ashley, who was not wearing a seat belt at the time of her accident. Mrs. Carroll offered strong support for the bill.

Representative Alexander offered an amendment, (Attachment IX). Ms. Hayes explained that the amendment was a technical one to conform the bill to law that already exists. She noted that the amendment was being amended by striking the word "fine" on line 5 and inserting the word "penalty" in its place in order to conform it.

Ms. Hayes was recognized to give further explanation of the bill.

Following committee discussion, the Alexander amendment was adopted.

Representative Nesbitt moved that the bill be held over until the next meeting to allow for further discussion. The motion carried.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 30, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanne Schorg	NCNA
	NCMS
Robert PA Bishop	Young, Moore & Henderson
Ran Miley	Bailey & Dixon LLP
	DMV
Michael Bryant	DL / DMV
	AAA Carolinas
	WCSA
	NCATL
AL DEITCH	JA + O / DOA
Matt Osborne	AOC
Bryan Beatty	DOJ
Doug Kapplin	DOJ / SBI
Melissa Lovell	DOJ
	CCPS
Bill Hall	UNC HSRC
Steve Edwards	NC Pediatric Society
MICHELLE ARRINGTON	ACLU
Eddie Caldwell	H McC&C P.A.
Bill Alexander	NCPBA
MT Burnette	GAC PD - DOA
Shannon Bullock	GHSP
Pat Carver	Visitor
Kathy Carroll	Visitor

VISITOR REGISTRATION SHEET

Judiciary I - 3/30/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Joe Parker	6HSP
2.	Lawrence Davis	Womble Carlyle AAA of the Carolinas
3.	Pam Duncan	" (WCSK) - "
4.	Evelyn Hawthorne	UNC-CH
5.	Dianne Bresley	Forestry
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 76
Judiciary II Committee Substitute Adopted 3/4/99

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

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trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

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a. The number of drivers stopped for routine traffic enforcement by State law enforcement officers and whether or not a citation or warning was issued;

b. Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;

c. The alleged traffic violation that led to the stop;

d. Whether a search was instituted as a result of the stop;

e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched;

f. The legal basis for the search, including whether consent was obtained and whether there was probable cause or reasonable suspicion to suspect a crime;

g. Whether any contraband was found and the type and amount of any such contraband;

h. Whether any written citation or any oral or written warning was issued as a result of the stop;

i. Whether an arrest was made as a result of either the stop or the search;

j. Whether any property was seized under forfeiture laws, with a description of that property;

k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

m. Whether any injuries resulted from the stop; and

n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.

The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article."

Section 2. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date.

ATTACHMENT III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ASA-019

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative_____

moves to amend the bill on page 3, lines 23-24, by rewriting the lines to read:

"Section. 2. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Section 3. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ASA-016

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative Nesbitt

moves to amend the bill on page 2, line 27,
by rewriting the line to read:
"passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched;"

and on page 2, lines 28-30
by rewriting the lines to read:
"f. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion;"

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 76 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

☐ 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 76
Judiciary II Committee Substitute Adopted 3/4/99
Proposed House Committee Substitute S76-PCS4615-SA

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-10 reads as rewritten:

"**§ 114-10. Division of Criminal Statistics.**

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests,

trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(2a) To collect, correlate, and maintain the following information regarding traffic law enforcement by State law enforcement officers:

a. The number of drivers stopped for routine traffic enforcement by State law enforcement officers and whether or not a citation or warning was issued;

b. Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;

c. The alleged traffic violation that led to the stop;

d. Whether a search was instituted as a result of the stop;

e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched;

f. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion;

g. Whether any contraband was found and the type and amount of any such contraband;

h. Whether any written citation or any oral or written warning was issued as a result of the stop;

i. Whether an arrest was made as a result of either the stop or the search;

j. Whether any property was seized, with a description of that property;

k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

m. Whether any injuries resulted from the stop; and

n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.

The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article."

Section 2. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Section 3. This act becomes effective October 1, 1999, and applies to law enforcement actions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 57
Committee Substitute Favorable 3/22/99

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat ~~safety~~ belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208 must~~ shall have ~~such~~ a ~~safety~~ seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. When the vehicle is equipped with sufficient seat belts to accommodate each passenger seated in the rear seat, each rear seat occupant who is 16 years of age or older shall have a seat belt properly fastened about his or her body in compliance with this section. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S 20-11 and G.S. 20-137.1 must be secured as required by those sections.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating~~ Any driver or passenger who fails to wear a seat belt as required by this

section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(f) reads as rewritten:

"(f) No ~~drivers license points or~~ insurance points or insurance surcharge shall be assessed on account of violation of this section. A driver's failure to wear a seat belt as required by this section while operating a passenger motor vehicle shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 4. G.S. 20-135.2A(h) is repealed.

Section 5. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 6. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 7. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting ~~a child~~ one or more passengers of less than ~~12~~ 16 years of age shall have ~~the child~~ each such passenger properly secured in a child passenger restraint system ~~(car safety seat)~~ or seat belt which meets federal standards applicable at the time of its manufacture. ~~The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~ In vehicles equipped with active passenger-side front air bags, children shall be properly secured in a rear seat unless the child restraint system is designed for use with air bags or the child is in a properly fitted shoulder and seat belt:

(1) A child less than five years of age and less than 40 pounds in weight shall be properly secured in a child passenger restraint system.

(2) A child five years of age or older, or a child weighing 40 or more pounds, shall be properly secured in a child passenger restraint system or seat belt."

Section 8. G.S. 20-137.1(d) reads as rewritten:

"(d) No ~~driver license points or~~ insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 9. This act becomes effective October 1, 1999.

HOUSE BILL 57:
Motor Vehicle Occupant Restraints

BILL ANALYSIS

Committee: House Judiciary I
Date: March 30, 1999
Version: Second Edition

Introduced by: Representatives Alexander and Clary
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***HB57 requires all passengers in a vehicle to wear a seat belt and raises the age for which a child safety seat is required.***

CURRENT LAW: Current law requires that the driver and any front seat passenger to wear a seatbelt. Child safety seats are required for children under 4 years old and under 40 pounds, and any other child under 12 years old must wear a seatbelt. No drivers license or insurance points are assessed and violation is not a moving violation, but rather an infraction punishable by a $25.00 fine.

BILL ANALYSIS: **HB57** amends the law to require that the driver and all passengers 16 years old or older wear a seatbelt even when seated in the back seat of the vehicle. Violation of this law is still an infraction punishable by a penalty of $25.00, but if the driver is not wearing a seatbelt, it is a moving violation and will be assessed drivers license points.

Additionally, all children under the age of 16 must be in a child safety seat or a seatbelt. Children under the age of 5 years old, and under 40 pounds, must be in a child safety seat. All other children must be in seat belts. As with the provisions for adults, violation of these requirements is a moving violation and will be assessed drivers license points.

This act becomes effective October 1, 1999.

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 57

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

H57-ASA-015

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative Alexander

moves to amend the bill on page 2, lines 37-38,
by inserting between the lines a new section to read:
" Section 8. G.S. 20-137.1(c) reads as rewritten:
' (c) Any person convicted of violating this section may be punished by a ~~fine~~ penalty not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under ~~four~~ five years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.'"

and by renumbering the remaining sections accordingly.

SIGNED Martha B. Alexander
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

HOUSE JUDICIARY I COMMITTEE

April 1, 1999

AGENDA

House Bill 57 - Motor Vehicle Occupant Restraints
Representative Alexander

House Bill 660 – Collection Agency Definition
Representative Nesbitt

House Bill 661 – Juvenile Community Service
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 1, 1999
Minutes

The House Judiciary I Committee met on Thursday, April 1, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Gray, Insko, Moore, Nesbitt and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I).

Representative Alexander was recognized for additional comments on **House Bill 57, AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY**, (Attachment II). The bill was explained and discussed during the March 30, 1999 meeting of the committee. Representative Alexander sent forward a clarifying amendment, (Attachment III), and moved its adoption.

Ms. Susan Hayes, Committee Counsel, was recognized to explain the amendment. Ms. Hayes stated that the amendment addressed the section that requires children to be seat belted. She said that the intent is to charge the driver only once no matter how many children are improperly fastened. The amendment clarifies that one ticket would be issued. The amendment was adopted.

Considerable discussion followed.

Representative Nesbitt stated that he felt that it was going to be difficult to educate the public regarding the provisions of the bill

Mr. Joe Parker, Director, Governor's Highway Safety Program, responded to questions. He stated that North Carolina has one of the largest educational campaigns in the country with regard to educating parents, grandparents and others who transport children in vehicles. He said that the highway patrol, sheriff's departments and local police departments are involved in educational programs. Mr. Parker stated that funds have been allocated by Congress through the Highway Safety Bill for a paid advertising campaign on radio and television. He said these funds would be dedicated to educate the citizens of North Carolina about changes enacted by the General Assembly.

Representative Ellis stated that there should be an extensive public education effort regarding the correct installation of infant seats, etc. prior to the passing of laws to penalize people for failure to do so.

Mr. Bill Hall, Highway Safety Research Center, was recognized and spoke regarding the proper fit of seat belts.

Representative Moore offered an amendment, (Attachment IV), and moved its adoption. The amendment would change the language from "the rear seat" to "**a** rear seat," to allow for vehicles that have more than one rear seat.

Upon vote of the committee, the amendment was adopted.

Representative Moore expressed concern that nothing was being done to address people who ride in the back of trucks and in the rear cargo area of cars.

Representative Clary spoke in support of the bill and moved that the amendments be rolled into a committee substitute #2, that the committee substitute be given a favorable report, and committee substitute #1 be given an unfavorable report.

Representative Gardner questioned whether there was a federal standard regarding seat belts.

Mr. Hall replied that federal standards do exist and that they are appropriately labeled.

Representative Nesbitt offered an amendment, (Attachment V), and moved its adoption. Representative Nesbitt stated that the amendment would remove the two points assessed to the driver.

Representative Alexander spoke in opposition to the amendment.

Upon vote of the committee, the amendment failed.

The motion for a favorable report was before the committee. Upon vote of the committee, the motion carried, (Attachment VI). A copy of committee substitute #2 is attached, (Attachment VII).

The meeting was adjourned at 10:55.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 1, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	WCSR
Michael E. Bryant	DMV/DL
G Edgerton	DOA/YAIO
J Pinsky	AAA Carolinas
Paula Wolf	Covenant w/NC's Children
C. Medlin	" " "
MT Burnette	GACPD
Ken D. Hurd	
Bee Head	UNC-HSRC
Chris Hoke	DHHS
Glenn Wells	DHHS/Public Health
Myth Osborne	AOC
Andrea [illegible]	[illegible] Found.
Judy Bullock	GHSP
Joe Parker	GHSP
Lawrence Davis	AAA of the Carolinas
Cassy DK	OVT
[illegible]	NCBA Volunteer
Deborah Ross	ACLU
Ruth Salopie	NCDOT
Dallas Woodhouse	NBC-17
Durland Barnett	Gov. Office
Roady B. Rage	Rel.
Melissa Marsh	WNCN - NBC17

ATTACHMENT III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 57

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

H57-ASA-020 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative Alexander

moves to amend the bill on page 2, line 24,
by rewriting the line to read:
"~~12~~ 16 years of age shall have ~~the child~~ all such passengers
properly secured in a".

SIGNED Martha Alexander
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 57
Committee Substitute Favorable 3/22/99

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat ~~safety~~ belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208 must~~ shall have ~~such~~ a ~~safety~~ seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. When the vehicle is equipped with sufficient seat belts to accommodate each passenger seated in the rear seat, each rear seat occupant who is 16 years of age or older shall have a seat belt properly fastened about his or her body in compliance with this section. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S 20-11 and G.S. 20-137.1 must be secured as required by those sections.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating~~ Any driver or passenger who fails to wear a seat belt as required by this

section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(f) reads as rewritten:

"(f) No ~~drivers license points or~~ insurance points or insurance surcharge shall be assessed on account of violation of this section. A driver's failure to wear a seat belt as required by this section while operating a passenger motor vehicle shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 4. G.S. 20-135.2A(h) is repealed.

Section 5. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 6. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 7. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting ~~a child~~ one or more passengers of less than ~~12~~ 16 years of age shall have ~~the child~~ each such passenger properly secured in a child passenger restraint system ~~(car safety seat)~~ or seat belt which meets federal standards applicable at the time of its manufacture. ~~The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~ In vehicles equipped with active passenger-side front air bags, children shall be properly secured in a rear seat unless the child restraint system is designed for use with air bags or the child is in a properly fitted shoulder and seat belt:

(1) A child less than five years of age and less than 40 pounds in weight shall be properly secured in a child passenger restraint system.

(2) A child five years of age or older, or a child weighing 40 or more pounds, shall be properly secured in a child passenger restraint system or seat belt."

Section 8. G.S. 20-137.1(d) reads as rewritten:

"(d) No ~~driver license points or~~ insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 9. This act becomes effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT IV

(Please type or use ballpoint pen)

H. B. No. 57 DATE _____

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

Rep.) Moore
Sen.)

moves to amend the bill on page 1, line 10,

by deleting "the" and inserting "a"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT V

(Please type or use ballpoint pen)

H. B. No. 57 DATE

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

(Rep.) Nesbitt
Sen.)

moves to amend the bill on page 2, line 7-12

by deleting those lines and by renumbering the remaining sections accordingly.

SIGNED Martin Nesbitt

ADOPTED FAILED TABLED

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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 57 A BILL TO BE ENTITLED AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

☐ 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 (# 2), ☐ ~~which changes the title~~, unfavorable as to (~~original bill~~) (Committee Substitute Bill # 1), ~~(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

HOUSE BILL 57
Committee Substitute Favorable 3/22/99
Proposed Committee Substitute H57-PCS2179-SA

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat ~~safety~~ belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208 must~~ shall have ~~such~~ a ~~safety~~ seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. When the vehicle is equipped with sufficient seat belts to accommodate each passenger seated in a rear seat, each rear seat occupant who is 16 years of age or older shall have a seat belt properly fastened about his or her body in compliance with this section. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S 20-11 and G.S. 20-137.1 must be secured as required by those sections.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person~~

~~violating~~ Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(f) reads as rewritten:

"(f) No ~~drivers license points or~~ insurance points or insurance surcharge shall be assessed on account of violation of this section. A driver's failure to wear a seat belt as required by this section while operating a passenger motor vehicle shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 4. G.S. 20-135.2A(h) is repealed.

Section 5. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 6. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 7. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting ~~a child~~ one or more passengers of less than ~~12~~ 16 years of age shall have ~~the child~~ all such passengers properly secured in a child passenger restraint system ~~(car safety seat)~~ or seat belt which meets federal standards applicable at the time of its manufacture. ~~The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~ In vehicles equipped with active passenger-side front air bags, children shall be properly secured in a rear seat unless the child restraint system is designed for use with air bags or the child is in a properly fitted shoulder and seat belt:

(1) A child less than five years of age and less than 40 pounds in weight shall be properly secured in a child passenger restraint system.

(2) A child five years of age or older, or a child weighing 40 or more pounds, shall be properly secured in a child passenger restraint system or seat belt."

Section 8. G.S. 20-137.1(c) reads as rewritten:

"(c) Any person convicted of violating this section may be punished by a ~~fine~~ penalty not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under ~~four~~ five years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system."

Section 9. G.S. 20-137.1(d) reads as rewritten:

"(d) No ~~driver license points or~~ insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c), but shall not be considered a moving violation for purposes of G.S. 20-28.1, 58-36-65, or 58-36-75."

Section 10. This act becomes effective October 1, 1999.

HOUSE JUDICIARY I COMMITTEE

April 6, 1999

AGENDA

House Bill 660 – Collection Agency Definition
Representative Nesbitt

House Bill 661 – Juvenile Community Service
Representative Nesbitt

House Bill 495 – Family Law Arbitration Act
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
April 6, 1999
Minutes

The House Judiciary I Committee met on Tuesday, April 6, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Ellis, Gray, Insko, Miller, Moore, Nesbitt, and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I).

Representative Nesbitt was recognized to explain **House Bill 660, AN ACT TO CLARIFY THE DEFINITION OF COLLECTION AGENCY SO THAT THE IV-D CHILD ENFORCEMENT PROGRAM IS REGULATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**, (Attachment II). Representative Nesbitt stated that many local agencies are beginning to contract with private contractors for child support. He said that the bill provides that these people are not a collection agency as defined in the law.

A summary was prepared by Ms. Susan Hayes, Committee Counsel, (Attachment III).

Representative Ellis moved for a favorable report for House Bill 660. The motion carried, (Attachment IV).

Representative Nesbitt was recognized to explain **House Bill 661, AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES**, (Attachment V). Representative Nesbitt stated that this bill was brought to his attention by the courts system in Buncombe County. He stated that in the case of young kids, such as 10 year olds, who are required to perform community service, the requirement for a minimum of 100 to a maximum of 200 hours is not workable. These young children must be supervised, and this is creating a hardship.

Ms Susan Hayes, Committee Counsel, spoke briefly. A summary prepared by her is attached, (Attachment VI).

Mr. Larry C. Dix, Office of Juvenile Justice, spoke briefly saying that the bill allows flexibility that is needed in specific situations.

Representative Alexander moved that the bill be given a favorable report. The motion carried, (Attachment VII).

Representative Hackney was recognized to continue the discussion of **House Bill 495. AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57**, (Attachment VIII). The bill was explained and discussed during the March 23, 1999 meeting.

Representative Hackney stated that amendments had been prepared to address concerns that had been expressed during the previous discussion of the bill regarding child custody and child support.

Representative Nesbitt offered an amendment, (Attachment IX), and moved its adoption. The amendment would eliminate child custody and child support from pre-nuptial binding arbitration.

Upon vote of the committee, the amendment was adopted.

Representative Nesbitt offered a second amendment, (Attachment X), and moved its adoption. The amendment would provide for the court to vacate an award for child support or child custody if it is determined to be not in the best interest of the child. The burden of proof would be on the party seeking to vacate the arbitrator's award.

Following considerable discussion, the amendment was adopted.

Representative Nesbitt offered a third amendment, (Attachment XI) which was adopted by the committee.

The bill was held over to address additional questions of some of the committee members.

The meeting was adjourned at 11:00 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary I April 6, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Miriam Saxon	Admin. Office of the Courts
2. Linda Kaye Teal	Attorney at Law
3. John Rust	NCFPC
4. Barry Miller	DHHS-Child Support Enforcement
5. Sharon Ransone	DSS
6. Byron Smith	SDA
7. Mike Adams	SDA
8. Laura Harkell	NCBA
9. Pam Deardorff	YA10 / DOA
10. Frank Gray	N.C. Assn. Housing
11. Chris Sinclair	NC Assn. Hsg. Ind.
12. Mary Carmilia	Mecklenburg County
13. Deborah Reo	ACLU
14. Jane Wise	NC-Now
15. Jim Blackburn	Assoc. County Comm'rs.
16. Ken Kinion	American General
17. Chuck Barbaus	Resident Lenders Inc
18.	
19.	
20.	
21.	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 660

Short Title: Collection Agency Definition. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF COLLECTION AGENCY SO THAT THE IV-D CHILD ENFORCEMENT PROGRAM IS REGULATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-70-15 reads as rewritten:

"**§ 58-70-15. Definition of collection agency and collection agency business.**

"Collection agency" means and includes all persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation or association, delinquent claims of any kind owed or due or asserted to be owed or due the solicited person, firm, corporation or association, and all persons, firms, corporations and associations directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

"Collection agency" shall include:

(1) Any person, firm, corporation or association who shall procure a listing of delinquent debtors from any creditor and who shall sell such listing or otherwise receive any fee or benefit from collections made on such listing; and

(2) Any person, firm, corporation or association which attempts to or does transfer or sell to any person, firm, corporation or association not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by

any person, firm, corporation, or association other than the creditor or owner of the claim or demand; and

(3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

"Collection agency" does not mean or include:

(1) Regular employees of a single creditor;

(2) Banks, trust companies, or bank-owned, controlled or related firms, corporations or associations engaged in accounting, bookkeeping or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors;

(3) Mortgage banking companies;

(4) Savings and loan associations;

(5) Building and loan associations;

(6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business;

(7) Express, telephone and telegraph companies subject to public regulation and supervision;

(8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman;

(9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court;

(10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands;

(11) "Collection agency" shall not include any person, firm, corporation or association attempting to collect or collecting claims, in his or its own name, of a business or businesses owned wholly or substantially by the same person, firm, corporation, or association;

(12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution ~~services.~~ services; and

(13) The designated representatives of programs as defined by G.S. 110-129(5)."

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

HOUSE BILL 660:
Collection Agency Definition

BILL ANALYSIS

Committee: House Judiciary I
Date: April 1, 1999
Version: First Edition

Introduced by: Representative Nesbitt
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 660 clarifies the definition of collection agency to ensure that the IV-D child enforcement program is regulated by the Department of Health and Human Services.***

BILL ANALYSIS: House Bill 660 amends G.S. 58-70-15 to provide that the term "collection agency" does not include designated representatives of programs for child support enforcement for a county or region of the State as defined by G.S. 110-129(5).

This act becomes effective when it becomes laws.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 660 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DEFINITION OF COLLECTION AGENCY SO THAT THE IV-D CHILD ENFORCEMENT PROGRAM IS REGULATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

☒ 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

HOUSE BILL 661

Short Title: Juvenile Community Service. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2506(23), as enacted by S.L. 1998-202 and effective July 1, 1999, reads as rewritten:

"(23) Order the juvenile to perform up to 200 hours supervised community service ~~of not less than 100 hours and not more than 200 hours,~~ consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense."

Section 2. This act becomes effective July 1, 1999, and applies to acts committed on or after that date.

HOUSE BILL 661:
Juvenile Community Service

BILL ANALYSIS

Committee: House Judiciary I
Date: April 1, 1999
Version: First Edition

Introduced by: Representative Nesbitt
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: House Bill 661 amends G.S. 7B-2506(23) to allow a judge to order up to 200 hours of community service for Level 2 juvenile offenders.

CURRENT LAW: The current G.S. 7B-2506(23), scheduled to become effective July 1, 1999, allows a judge to order up to 100 hours of community service for a juvenile in Level 1, and a minimum of 100 to a maximum of 200 hours community service for a juvenile in Level 2. The community service option is one of several dispositional alternatives a judge has for Level 2 offenders.

BILL ANALYSIS: This bill would change the community service hours for Level 2 to "up to 200 hours", thus eliminating the requirement that a Level 2 offender do a minimum of 100 hours community service.

This act becomes effective July 1, 1999, and applies to offenses committed 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) **Hackney** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 661 A BILL TO BE ENTITLED AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 495

Short Title: Family Law Arbitration Act. (Public)

Sponsors: Representatives Hackney; and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

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.

"Family Law Arbitration Act.

"§ 50-41. Purpose; short title.

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes and similar legislation, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

(b) This Article may be cited as the North Carolina Family Law Arbitration Act.

"§ 50-42. Arbitration agreements made valid, irrevocable, and enforceable.

(a) Before, during, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital

relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(b) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award under an agreement in which a provision stipulates that this Article does not apply.

"§ 50-43. Proceedings to compel or stay arbitration.

(a) On a party's application showing an agreement under G.S. 50-42 and an opposing party's refusal to arbitrate, the court shall order the parties to proceed with the arbitration. If an opposing party denies existence of an agreement to arbitrate, the court shall proceed summarily to determine whether a valid agreement exists and shall order arbitration if it finds for the moving party; otherwise, the application shall be denied.

(b) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to go to arbitration.

(c) If an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a court of competent jurisdiction, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

(d) The court shall order a stay in any action or proceeding involving an issue subject to arbitration if an order or an application for arbitration has been made under this section. If the issue is severable, the stay may be with respect to that specific issue only. When the application is made in an action or proceeding, the order compelling arbitration shall include a stay of the court action or proceeding.

(e) An order for arbitration shall not be refused and a stay of arbitration shall not be granted on the ground that the claim in issue lacks merit or because grounds for the claim have not been shown.

"§ 50-44. Interim relief and interim measures.

(a) In the case of an arbitration where arbitrators have not yet been appointed, or where the arbitrators are unavailable, a party may seek interim relief directly from a court as provided in subsection (c) of this section. Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases a party shall seek interim measures as described in subsection (d) of this section from the arbitrators and has no right to seek interim relief from a court, except that a party to an arbitration governed by this Article may request from the court enforcement of the arbitrators' order granting interim measures.

(c) In connection with an agreement to arbitrate or a pending arbitration, the court may grant under subsection (a) of this section any of the following:

(1) An order of attachment or garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;
(4) Appointment of a receiver;
(5) Delivery of money or other property into court;
(6) Notice of lis pendens;
(7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(i), or 50-20(il); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes;
(8) Any relief permitted by federal law or treaties to which the United States is a party; or
(9) Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

(d) The arbitrators may, at a party's request, order any party to take any interim measures of protection that the arbitrators consider necessary in respect to the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (c) of this section. The arbitrators may require any party to provide appropriate security, including security for costs as provided in G.S. 50-51, in connection with interim measures.

(e) In considering a request for interim relief or enforcement of interim relief, the court shall give preclusive effect to any finding of fact of the arbitrators in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or granted.

(f) Where the arbitrators have not ruled on an objection to their jurisdiction, the court shall not grant preclusive effect to the arbitrators' findings until the court has made an independent finding as to the arbitrators' jurisdiction. If the court rules that the arbitrators do not have jurisdiction, the application for interim relief shall be denied.

(g) Availability of interim relief or interim measures under this section may be limited by the parties' prior written agreement, except for relief pursuant to G.S. 7B-502, 7B-1902, 50-13.5(d), 50-20(h), 50A-25, 50B-3, Chapter 52C of the General Statutes; federal law; or treaties to which the United States is a party, whose purpose is to provide immediate, emergency relief or protection.

(h) Arbitrators who have cause to suspect that any child is abused or neglected shall report the case of that child to the director of the department of social services of the county where the child resides or, if the child resides out-of-state, of the county where the arbitration is conducted.

(i) A party seeking interim measures, or any other proceeding before the arbitrators, shall proceed in accordance with the agreement to arbitrate. If the agreement to arbitrate does not provide for a method of seeking interim measures, or for other proceedings before the arbitrators, the party shall request interim measures or a hearing by notifying the arbitrators and all other parties of the request. The arbitrators shall notify the parties of the date, time, and place of the hearing.

"§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.

(a) Unless the parties agree otherwise, a single arbitrator shall be chosen by the parties to arbitrate all matters in dispute.

(b) If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. The agreement may provide for appointing one or more arbitrators. Upon the application of a party the court shall appoint arbitrators in any of the following situations:

(1) The method agreed upon by the parties in the arbitration agreement fails or for any reason cannot be followed.

(2) An arbitrator who has already been appointed fails or is unable to act and a successor has not been chosen by the parties.

(3) The parties cannot agree on an arbitrator.

(c) Arbitrators appointed by the court have all the powers of those arbitrators specifically named in the agreement. In appointing arbitrators a court shall consult with prospective arbitrators as to their availability and shall refer to each of the following:

(1) The positions and desires of the parties.

(2) The issues in dispute.

(3) The skill, substantive training, and experience of prospective arbitrators in those issues, including their skill, substantive training, and experience in family law issues.

(4) The availability of prospective arbitrators.

(d) The parties may agree to employ an established arbitration institution to conduct the arbitration. If the agreement does not provide a method for appointment of arbitrators and the parties cannot agree on an arbitrator, the court may appoint an established arbitration institution the court considers qualified in family law arbitration to conduct the arbitration.

(e) The parties may agree on rules for conducting the arbitration. If the parties cannot agree on rules for conducting the arbitration, the arbitrators shall select the rules for conducting the arbitration after hearing all parties and taking particular reference to model rules developed by arbitration institutions or similar sources. If the arbitrators cannot decide on rules for conducting the arbitration, upon application by a party, the court may order use of rules for conducting the arbitration, taking particular reference to model rules developed by arbitration institutions or similar sources.

(f) Arbitrators and established arbitration institutions, whether chosen by the parties or appointed by the court, have the same immunity as judges from civil liability for their conduct in the arbitration.

(g) 'Arbitration institution' means any neutral, independent organization, association, agency, board, or commission that initiates, sponsors, or administers arbitration proceedings, including involvement in appointment of arbitrators.

(h) The court may award costs, as provided in G.S. 50-51(f), in connection with applications and other proceedings under this section.

"§ 50-46. Majority action by arbitrators.

The arbitrators' powers shall be exercised by a majority unless otherwise provided by the arbitration agreement or this Article.

"§ 50-47. Hearing.

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than five days before the hearing. Appearance at the hearing waives any claim of deficiency of notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. Upon application of a party, the court may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(c) All the arbitrators shall conduct the hearing, but a majority may determine any question and may render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(d) Upon request of any party or at the election of any arbitrator, the arbitrators shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrators shall decide how the cost of the record will be apportioned.

"§ 50-48. Representation by attorney.

A party has the right to be represented by counsel at any proceeding or hearing under this Article. A waiver of representation prior to a proceeding or hearing is ineffective.

"§ 50-49. Witnesses; subpoenas; depositions; court assistance.

(a) The arbitrators have the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents, and other evidence. Subpoenas issued by the arbitrators shall be served and, upon application to the court by a party or the arbitrators, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

(b) On the application of a party and for use as evidence, the arbitrators may permit depositions to be taken in the manner and upon the terms the arbitrators designate.

(c) All provisions of law compelling a person under subpoena to testify apply.

(d) The arbitrators or a party with the approval of the arbitrators may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B, and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence, and may impose sanctions for failure to comply with its orders.

(e) A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

"**§ 50-50. Consolidation.**

(a) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, they may agree upon common arbitrators to hear all arbitrations, and these arbitrations shall proceed as consolidated.

(b) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, the court, upon application by a party, may do any of the following:

(1) Order the arbitrations consolidated on terms the court considers just and necessary;

(2) If all parties cannot agree on arbitrators for the consolidated arbitration, appoint arbitrators as provided by G.S. 50-45; and

(3) If all parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make other orders it considers necessary.

"**§ 50-51. Award; costs.**

(a) The award shall be in writing, dated and signed by the arbitrators joining in the award, with a statement of the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(b) Unless the parties agree otherwise, the award shall state the reasons upon which it is based.

(c) Unless the parties agree otherwise, the arbitrators may award interest as provided by law.

(d) The arbitrators in their discretion may award specific performance to a party requesting an award of specific performance when that would be an appropriate remedy.

(e) Unless the parties agree otherwise, the arbitrators may not award punitive damages. If arbitrators award punitive damages, they shall state the award in a record and shall specify facts justifying the award and the amount of the award attributable to punitive damages.

(f) Costs.

(1) Unless the parties otherwise agree, awarding of costs of an arbitration shall be in the arbitrators' discretion.

(2) In making an award of costs, the arbitrators may include any or all of the following as costs:

a. Fees and expenses of the arbitrators, expert witnesses, and translators;

b. Fees and expenses of counsel and of an institution supervising the arbitration, if any;
c. Any other expenses incurred in connection with the arbitration proceedings;
d. Sanctions awarded by the arbitrators or the court, including those provided by N.C.R. Civ. P. 11 and 37; and
e. Costs allowed by Chapters 6 and 7A of the General Statutes.

(3) In making an award of costs, the arbitrators shall specify each of the following:
a. The party entitled to costs;
b. The party who shall pay costs;
c. The amount of costs or method of determining that amount; and
d. The manner in which costs shall be paid.

(g) An award shall be made within the time fixed by the agreement. If no time is fixed by the agreement, the award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party.

"§ 50-52. Change of award by arbitrators.

On a party's application to the arbitrators or, if an application to the court is pending under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court under the conditions ordered by the court, the arbitrators may modify or correct the award upon grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 50-55, or clarify the award. The application shall be made within 20 days after delivery of the award to the opposing party, stating that the opposing party must serve objections to the application, if any, within 10 days from notice. An award modified or corrected under this section is subject to the provisions of G.S. 50-53 through G.S. 50-56.

"§ 50-53. Confirmation of award.

Upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-54. Vacating an award.

(a) Upon a party's application, the court shall vacate an award for any of the following reasons:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing the rights of a party;

(3) The arbitrators exceeded their powers;
(4) The arbitrators refused to postpone the hearing upon a showing of sufficient cause for the postponement, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of G.S. 50-47;
(5) There was no arbitration agreement, the issue was not adversely determined in proceedings under G.S. 50-43, and the party did not participate in the arbitration hearing without raising the objection. The fact that the relief awarded either could not or would not be granted by a court is not a ground for vacating or refusing to confirm the award;
(6) The award for child support or child custody constituted a gross abuse of discretion by the arbitrators in rendering the award;
(7) The award included punitive damages, and the court determines that the award for punitive damages is clearly erroneous; or
(8) If the parties contract in an arbitration agreement for judicial review of errors of law in the award, the court shall vacate the award if the arbitrators have committed an error of law prejudicing a party's rights.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. If the application is predicated on corruption, fraud, or other undue means, it shall be made within 90 days after these grounds are known or should have been known.

(c) In vacating an award on grounds other than stated in subdivision (5) of subsection (a) of this section, the court may order a rehearing before arbitrators chosen as provided in the agreement, or in the absence of a provision regarding the appointment of arbitrators, by the court in accordance with G.S. 50-45. The time within which the agreement requires an award to be made applies to the rehearing and commences from the date of the order.

(d) If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award and may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"**§ 50-55. Modification or correction of award.**

(a) Upon application made within 90 days after delivery of a copy of an award to an applicant, the court shall modify or correct the award where at least one of the following occurs:

(1) There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award;
(2) The arbitrators have awarded upon a matter not submitted to them, and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify or correct the award to effect its intent and shall confirm the award as modified or corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(d) The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-56. Modification of award for alimony, postseparation support, child support, or child custody based on substantial change of circumstances.

(a) A court or the arbitrators may modify an award for postseparation support, alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S. 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this section.

(b) Unless the parties have agreed that an award for postseparation support or alimony shall be nonmodifiable, an award by arbitrators for postseparation support or alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be modified if a court order for alimony or postseparation support could be modified pursuant to G.S. 50-16.9.

(c) An award by arbitrators for child support or child custody may be modified if a court order for child support or child custody could be modified pursuant to G.S. 50-13.7.

(d) If an award for modifiable postseparation support or alimony, or an award for child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the parties' agreement these matters may be submitted to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(e) If an award for modifiable postseparation support or alimony, or an award for child support or child custody has been confirmed pursuant to G.S. 50-53, upon the parties' agreement and joint motion the court may remit these matters to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(f) Except as otherwise provided in this section, the provisions of G.S. 50-55 apply to modifications or corrections of awards for postseparation support, alimony, child support, or child custody.

"§ 50-57. Orders or judgments on award.

Upon granting an order confirming, modifying, or correcting an award, an order or judgment shall be entered in conformity with the order and docketed and enforced as any other order or judgment. The court may award costs, as provided in G.S. 50-51(f), of the application and of proceedings subsequent to the application and disbursements.

"§ 50-58. Applications to the court.

Except as otherwise provided, an application to a court under this Article shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for making and hearing motions in civil actions. Unless the parties agree

otherwise, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions.

"**§ 50-59. Court; jurisdiction.**

The term 'court' means a court of competent jurisdiction of this State. Making an agreement in this State described in G.S. 50-42 or any agreement providing for arbitration in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

"**§ 50-60. Appeals.**

(a) An appeal may be based on failure to comply with the procedural aspects of this Article. An appeal may be taken from any of the following:

(1) An order denying an application to compel arbitration made under G.S. 50-43;

(2) An order granting an application to stay arbitration made under G.S. 50-43(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment entered pursuant to provisions of this Article.

(b) Unless the parties contract in an arbitration agreement for judicial review of errors of law as provided in G.S. 50-54(a), a party may not appeal on the basis that the arbitrator failed to apply correctly the law under Chapters 50, 50A, 52B, or 52C of the General Statutes.

(c) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

"**§ 50-61. Article not retroactive.**

This Article applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

"**§ 50-62. Construction; uniformity of interpretation.**

Certain provisions of this Article have been adapted from the Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes."

Section 2. G.S. 1-567.57(b) reads as rewritten:

"(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, ~~on~~ upon application by ~~one party with the consent of all the other parties to those arbitration agreements, may:~~ a party, may do any of the following:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary."

Section 3. This act becomes effective October 1, 1999.

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 495

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

H495-ASA-023

Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Representative Nesbitt

moves to amend the bill on page 1, lines 23-24, through page 2, line 1
by rewriting the lines to read:
"(a) During or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital relationship. Before marriage, parties may agree in writing to submit to arbitration any controversy, except for child custody, child support, or the divorce itself, arising out of the marital relationship. This agreement is valid, enforceable, and irrevocable except with both"

SIGNED Martha Nesbitt
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT X

(Please type or use ballpoint pen)

H. B. No. 495 DATE _____

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

Rep.) Nesbitt
Sen.)

moves to amend the bill on page 8, line s 12-13

by rewriting the lines to read:

"(6) The court determines that the award for child support or child custody is not in the best interest of the child. The burden of proof at a hearing under this subdivision is on the party seeking to vacate the arbitrator's award."

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT XI

(Please type or use ballpoint pen)

H. B. No. 495 DATE

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

(Rep.) Nesbitt
Sen.)

moves to amend the bill on page 8, line 27

by deleting "G.S. 50-45." and inserting "G.S. 50-45, except in the case of a vacated award for child ~~custody~~ support or child custody ~~support~~ in which case the court may proceed to hear and determine all such issues."

SIGNED Martin Nesbitt

ADOPTED FAILED TABLED

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

HOUSE JUDICIARY I COMMITTEE

April 8, 1999

AGENDA

House Bill 494 – Uniform Child-Custody Act
Representative Hackney

House Bill 495 – Family Law Arbitration Act
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
April 8, 1999
Minutes

The House Judiciary I Committee met on Thursday, April 8, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Clary, Gardner, Miller, Moore, Nesbitt, and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I). Representative Hackney asked Representative Nesbitt to preside over the meeting.

Representative Nesbitt recognized Representative Hackney to continue the discussion of **House Bill 495, AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57**, (Attachment II). A summary of the bill is attached, (Attachment III). Representative Hackney stated that considerable discussion had taken place at the previous meeting and that three amendments had been adopted. He stated that additional amendments had been prepared to address additional questions posed by members at the last meeting. He offered an amendment, and moved its adoption, (Attachment IV). The amendment was adopted.

Representative Hackney offered a second amendment, and moved its adoption, (Attachment V). The amendment was adopted.

Representative Hackney moved that all the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment VI). A copy of the committee substitute is attached, (Attachment VII)

Representative Hackney was recognized to explain **House Bill 494, AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES**, (Attachment VIII).

A handout, prepared by the North Carolina Bar Association, was distributed, (Attachment IX).

Representative Hackney stated that the bill is a successor to the Uniform Child Custody Jurisdiction and Enforcement Act that has been adopted by every state in the Union. The act established some rules for the jurisdictional disputes in custody cases. He stated that this new act, which has been adopted in several states, is needed because it incorporates the provisions of the federal Parental Kidnapping Prevention Act (PKPA). He said that the biggest change is the following: If the initial child-custody determination is made in North Carolina, so long as any party continues to live in North Carolina, North Carolina is the home state, or if the court determines that it ought to let it go to another state. Representative Hackney said that this is a much firmer rule than now exists by which the two judges talk and attempt to work out the best place.

Ms. Susan Hayes, Committee Counsel, was recognized to give further explanation of the bill. She explained changes addressed in the bill. Those changes are outlined in a summary of the bill that was prepared by Ms. Hayes, (Attachment X).

Following considerable committee discussion, Representative Hackney noted that the bill was the Uniform Act and asked that the committee members discuss the bill with anyone they felt they needed to and be ready to vote on the bill at the next meeting.

The meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

Judiciary I 4-8-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	LE Hartsell	NC Bar Association
2.	Lucius Pullen	ATTORNEY
3.	~~Gaston Press~~	20A, PA
4.	Penny Faulkner	Nurse of the day
5.	Bill Scoggin	NCBA
6.	Andy Lomont	N.C. Ltn.
7.	Dennis Patterson	AP
8.	Kay Michaels	PPOD
9.	Ed Pribett	NCTDA
10.	J. C. Cowan	NCTDA
11.	Robert M. Freeman	NCTDA
12.	Joe McClees	Consulting
13.	John Carraway	TDA
14.	Lawrence Davis	Womble Carlyle
15.		
16.		
17.		
18.		
19.		
20.		
21.		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 495

Short Title: Family Law Arbitration Act. (Public)

Sponsors: Representatives Hackney; and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

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.

"Family Law Arbitration Act.

"**§ 50-41. Purpose; short title.**

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes and similar legislation, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

(b) This Article may be cited as the North Carolina Family Law Arbitration Act.

"**§ 50-42. Arbitration agreements made valid, irrevocable, and enforceable.**

(a) Before, during, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital

relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(b) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award under an agreement in which a provision stipulates that this Article does not apply.

"§ 50-43. Proceedings to compel or stay arbitration.

(a) On a party's application showing an agreement under G.S. 50-42 and an opposing party's refusal to arbitrate, the court shall order the parties to proceed with the arbitration. If an opposing party denies existence of an agreement to arbitrate, the court shall proceed summarily to determine whether a valid agreement exists and shall order arbitration if it finds for the moving party; otherwise, the application shall be denied.

(b) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to go to arbitration.

(c) If an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a court of competent jurisdiction, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

(d) The court shall order a stay in any action or proceeding involving an issue subject to arbitration if an order or an application for arbitration has been made under this section. If the issue is severable, the stay may be with respect to that specific issue only. When the application is made in an action or proceeding, the order compelling arbitration shall include a stay of the court action or proceeding.

(e) An order for arbitration shall not be refused and a stay of arbitration shall not be granted on the ground that the claim in issue lacks merit or because grounds for the claim have not been shown.

"§ 50-44. Interim relief and interim measures.

(a) In the case of an arbitration where arbitrators have not yet been appointed, or where the arbitrators are unavailable, a party may seek interim relief directly from a court as provided in subsection (c) of this section. Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases a party shall seek interim measures as described in subsection (d) of this section from the arbitrators and has no right to seek interim relief from a court, except that a party to an arbitration governed by this Article may request from the court enforcement of the arbitrators' order granting interim measures.

(c) In connection with an agreement to arbitrate or a pending arbitration, the court may grant under subsection (a) of this section any of the following:

(1) An order of attachment or garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;
(4) Appointment of a receiver;
(5) Delivery of money or other property into court;
(6) Notice of lis pendens;
(7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(i), or 50-20(il); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes;
(8) Any relief permitted by federal law or treaties to which the United States is a party; or
(9) Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

(d) The arbitrators may, at a party's request, order any party to take any interim measures of protection that the arbitrators consider necessary in respect to the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (c) of this section. The arbitrators may require any party to provide appropriate security, including security for costs as provided in G.S. 50-51, in connection with interim measures.

(e) In considering a request for interim relief or enforcement of interim relief, the court shall give preclusive effect to any finding of fact of the arbitrators in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or granted.

(f) Where the arbitrators have not ruled on an objection to their jurisdiction, the court shall not grant preclusive effect to the arbitrators' findings until the court has made an independent finding as to the arbitrators' jurisdiction. If the court rules that the arbitrators do not have jurisdiction, the application for interim relief shall be denied.

(g) Availability of interim relief or interim measures under this section may be limited by the parties' prior written agreement, except for relief pursuant to G.S. 7B-502, 7B-1902, 50-13.5(d), 50-20(h), 50A-25, 50B-3, Chapter 52C of the General Statutes; federal law; or treaties to which the United States is a party, whose purpose is to provide immediate, emergency relief or protection.

(h) Arbitrators who have cause to suspect that any child is abused or neglected shall report the case of that child to the director of the department of social services of the county where the child resides or, if the child resides out-of-state, of the county where the arbitration is conducted.

(i) A party seeking interim measures, or any other proceeding before the arbitrators, shall proceed in accordance with the agreement to arbitrate. If the agreement to arbitrate does not provide for a method of seeking interim measures, or for other proceedings before the arbitrators, the party shall request interim measures or a hearing by notifying the arbitrators and all other parties of the request. The arbitrators shall notify the parties of the date, time, and place of the hearing.

"§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.

otherwise, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions.

"**§ 50-59. Court; jurisdiction.**

The term 'court' means a court of competent jurisdiction of this State. Making an agreement in this State described in G.S. 50-42 or any agreement providing for arbitration in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

"**§ 50-60. Appeals.**

(a) An appeal may be based on failure to comply with the procedural aspects of this Article. An appeal may be taken from any of the following:

(1) An order denying an application to compel arbitration made under G.S. 50-43;

(2) An order granting an application to stay arbitration made under G.S. 50-43(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment entered pursuant to provisions of this Article.

(b) Unless the parties contract in an arbitration agreement for judicial review of errors of law as provided in G.S. 50-54(a), a party may not appeal on the basis that the arbitrator failed to apply correctly the law under Chapters 50, 50A, 52B, or 52C of the General Statutes.

(c) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

"**§ 50-61. Article not retroactive.**

This Article applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

"**§ 50-62. Construction; uniformity of interpretation.**

Certain provisions of this Article have been adapted from the Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes."

Section 2. G.S. 1-567.57(b) reads as rewritten:

"(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, ~~on~~ upon application by ~~one party with the consent of all the other parties to those arbitration agreements, may:~~ a party, may do any of the following:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary."

Section 3. This act becomes effective October 1, 1999.

HOUSE BILL 495:
Family Law Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	March 23, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 495 enacts a new Family law Arbitration Act as Article 3 of Chapter 50 of the General Statutes. The bill is a recommendation of the North Carolina Bar Association's Dispute Resolution and Family Law Sections Joint Committee.

BILL ANALYSIS:

The Family Law Arbitration Act would permit, by agreement of all parties, the binding arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support.

The agreement must be made in writing, and may be made before, during, or after the marriage. The act is modeled on the Uniform Arbitration Act and the International Commercial Arbitration and Conciliation Act, with some added provisions.

Besides provisions regarding the manner in which the arbitrators are chosen and the procedure of the arbitration itself, the act contains provisions for interim relief and measures pending the outcome of the arbitration, as well as procedures for court enforcement of arbitrator ordered interim measures. There are also provisions regarding the vacation, correction, or modification of arbitration awards by the court under specific circumstances, and a provision for modification of awards of postseparation support, alimony, child support, or child custody in the same situations that state law allows modification of such orders currently.

The new provisions in Chapter 50 apply to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that the provisions shall apply to agreements dated before October 1, 1999.

The bill also amends G.S. 1-567.57(b) (international arbitration) to allow a court to take specified actions with respect to consolidation of arbitrations upon application of any party when the parties have agreed in their respective arbitration agreements or otherwise, to consolidation of arbitrations.

This bill is effective October 1, 1999.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 495

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

H495-ASA-026

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Hackney

moves to amend the bill on page 2, line 37, by rewriting the line to read:
"subsection (d) of this section from the arbitrators. A party has no right to seek interim"

and on page 2, line 40 by rewriting the line to read:
"measures, and review or modifcation of any interim measures governing child support or child custody."

and on page 3, lines 19-22, by rewriting the lines to read:
"(e) In considering a request for interim relief or enforcement of interim relief, any finding of fact of the arbitrators in the proceeding shall be binding on the court, including any finding regarding the probable validity of the claim that is the subject of the interim relief sought or granted, except that the court may review any findings of fact or modify any interim measures governing child support or child custody."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 495

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

H495-ASA-026 Page 2 of __

and on page 3, line 24 by rewriting the line to read:
"findings of the arbitrators shall not be binding on the court until the court has"

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 495

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

H495-ASA-026

and on page 3, line 24 by rewriting the line to read:
"findings of the arbitrators shall not be binding on the court until the court has"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTCHMENT VI

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 495 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

☐ 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

HOUSE BILL 495
Proposed Committee Substitute H495-PCS2211-SA

Short Title: Family Law Arbitration Act. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF ALL ISSUES ARISING FROM A MARITAL SEPARATION OR DIVORCE, EXCEPT FOR THE DIVORCE ITSELF, UPON THE AGREEMENT OF ALL PARTIES; AND TO AMEND G.S. 1-567.57.

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.

"Family Law Arbitration Act.

"§ 50-41. Purpose; short title.

(a) It is the policy of this State to allow, by agreement of all parties, the arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on substantial change of circumstances related to alimony, child custody, and child support. Pursuant to this policy, the purpose of this Article is to provide for arbitration as an efficient and speedy means of resolving these disputes, consistent with Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes and similar legislation, to provide default rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for proceedings ancillary to this arbitration.

(b) This Article may be cited as the North Carolina Family Law Arbitration Act.

"§ 50-42. Arbitration agreements made valid, irrevocable, and enforceable.

(a) During, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital relationship. Before marriage, parties may agree in writing to submit to arbitration any controversy, except for child support, child custody, or the divorce itself, arising out of the marital relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

(b) This Article does not apply to an agreement to arbitrate in which a provision stipulates that this Article does not apply or to any arbitration or award under an agreement in which a provision stipulates that this Article does not apply.

"**§ 50-43. Proceedings to compel or stay arbitration.**

(a) On a party's application showing an agreement under G.S. 50-42 and an opposing party's refusal to arbitrate, the court shall order the parties to proceed with the arbitration. If an opposing party denies existence of an agreement to arbitrate, the court shall proceed summarily to determine whether a valid agreement exists and shall order arbitration if it finds for the moving party; otherwise, the application shall be denied.

(b) Upon the application of a party, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. This issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the court shall order a stay if it finds for the moving party. If the court finds for the opposing party, the court shall order the parties to go to arbitration.

(c) If an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a court of competent jurisdiction, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

(d) The court shall order a stay in any action or proceeding involving an issue subject to arbitration if an order or an application for arbitration has been made under this section. If the issue is severable, the stay may be with respect to that specific issue only. When the application is made in an action or proceeding, the order compelling arbitration shall include a stay of the court action or proceeding.

(e) An order for arbitration shall not be refused and a stay of arbitration shall not be granted on the ground that the claim in issue lacks merit or because grounds for the claim have not been shown.

"**§ 50-44. Interim relief and interim measures.**

(a) In the case of an arbitration where arbitrators have not yet been appointed, or where the arbitrators are unavailable, a party may seek interim relief directly from a court as provided in subsection (c) of this section. Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases a party shall seek interim measures as described in subsection (d) of this section from the arbitrators. A party has no right to seek interim relief from a court, except that a party to an arbitration governed by this Article may request from the court enforcement of the arbitrators' order granting

interim measures and review or modification of any interim measures governing child support or child custody.

(c) In connection with an agreement to arbitrate or a pending arbitration, the court may grant under subsection (a) of this section any of the following:

(1) An order of attachment or garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;

(4) Appointment of a receiver;

(5) Delivery of money or other property into court;

(6) Notice of lis pendens;

(7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(i), or 50-20(i1); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes;

(8) Any relief permitted by federal law or treaties to which the United States is a party; or

(9) Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

(d) The arbitrators may, at a party's request, order any party to take any interim measures of protection that the arbitrators consider necessary in respect to the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (c) of this section. The arbitrators may require any party to provide appropriate security, including security for costs as provided in G.S. 50-51, in connection with interim measures.

(e) In considering a request for interim relief or enforcement of interim relief, any finding of fact of the arbitrators in the proceeding shall be binding on the court, including any finding regarding the probable validity of the claim that is the subject of the interim relief sought or granted, except that the court may review any findings of fact or modify any interim measures governing child support or child custody.

(f) Where the arbitrators have not ruled on an objection to their jurisdiction, the findings of the arbitrators shall not be binding on the court until the court has made an independent finding as to the arbitrators' jurisdiction. If the court rules that the arbitrators do not have jurisdiction, the application for interim relief shall be denied.

(g) Availability of interim relief or interim measures under this section may be limited by the parties' prior written agreement, except for relief pursuant to G.S. 7B-502, 7B-1902, 50-13.5(d), 50-20(h), 50A-25, 50B-3, Chapter 52C of the General Statutes; federal law; or treaties to which the United States is a party, whose purpose is to provide immediate, emergency relief or protection.

(h) Arbitrators who have cause to suspect that any child is abused or neglected shall report the case of that child to the director of the department of social services of the county where the child resides or, if the child resides out-of-state, of the county where the arbitration is conducted.

(i) A party seeking interim measures, or any other proceeding before the arbitrators, shall proceed in accordance with the agreement to arbitrate. If the

agreement to arbitrate does not provide for a method of seeking interim measures, or for other proceedings before the arbitrators, the party shall request interim measures or a hearing by notifying the arbitrators and all other parties of the request. The arbitrators shall notify the parties of the date, time, and place of the hearing.

"**§ 50-45. Appointment of arbitrators; rules for conducting the arbitration.**

(a) Unless the parties agree otherwise, a single arbitrator shall be chosen by the parties to arbitrate all matters in dispute.

(b) If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. The agreement may provide for appointing one or more arbitrators. Upon the application of a party, the court shall appoint arbitrators in any of the following situations:

(1) The method agreed upon by the parties in the arbitration agreement fails or for any reason cannot be followed.

(2) An arbitrator who has already been appointed fails or is unable to act, and a successor has not been chosen by the parties.

(3) The parties cannot agree on an arbitrator.

(c) Arbitrators appointed by the court have all the powers of those arbitrators specifically named in the agreement. In appointing arbitrators, a court shall consult with prospective arbitrators as to their availability and shall refer to each of the following:

(1) The positions and desires of the parties.

(2) The issues in dispute.

(3) The skill, substantive training, and experience of prospective arbitrators in those issues, including their skill, substantive training, and experience in family law issues.

(4) The availability of prospective arbitrators.

(d) The parties may agree to employ an established arbitration institution to conduct the arbitration. If the agreement does not provide a method for appointment of arbitrators and the parties cannot agree on an arbitrator, the court may appoint an established arbitration institution the court considers qualified in family law arbitration to conduct the arbitration.

(e) The parties may agree on rules for conducting the arbitration. If the parties cannot agree on rules for conducting the arbitration, the arbitrators shall select the rules for conducting the arbitration after hearing all parties and taking particular reference to model rules developed by arbitration institutions or similar sources. If the arbitrators cannot decide on rules for conducting the arbitration, upon application by a party, the court may order use of rules for conducting the arbitration, taking particular reference to model rules developed by arbitration institutions or similar sources.

(f) Arbitrators and established arbitration institutions, whether chosen by the parties or appointed by the court, have the same immunity as judges from civil liability for their conduct in the arbitration.

(g) 'Arbitration institution' means any neutral, independent organization, association, agency, board, or commission that initiates, sponsors, or administers arbitration proceedings, including involvement in appointment of arbitrators.

(h) The court may award costs, as provided in G.S. 50-51(f), in connection with applications and other proceedings under this section.

"§ 50-46. Majority action by arbitrators.

The arbitrators' powers shall be exercised by a majority unless otherwise provided by the arbitration agreement or this Article.

"§ 50-47. Hearing.

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and notify the parties or their counsel by personal service or by registered or certified mail, return receipt requested, not less than five days before the hearing. Appearance at the hearing waives any claim of deficiency of notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. Upon application of a party, the court may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(c) All the arbitrators shall conduct the hearing, but a majority may determine any question and may render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(d) Upon request of any party or at the election of any arbitrator, the arbitrators shall cause to be made a record of testimony and evidence introduced at the hearing. The arbitrators shall decide how the cost of the record will be apportioned.

"§ 50-48. Representation by attorney.

A party has the right to be represented by counsel at any proceeding or hearing under this Article. A waiver of representation prior to a proceeding or hearing is ineffective.

"§ 50-49. Witnesses; subpoenas; depositions; court assistance.

(a) The arbitrators have the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents, and other evidence. Subpoenas issued by the arbitrators shall be served and, upon application to the court by a party or the arbitrators, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

(b) On the application of a party and for use as evidence, the arbitrators may permit depositions to be taken in the manner and upon the terms the arbitrators designate.

(c) All provisions of law compelling a person under subpoena to testify apply.

(d) The arbitrators or a party with the approval of the arbitrators may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B, and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence and may impose sanctions for failure to comply with its orders.

(e) A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

"§ 50-50. Consolidation.

(a) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, they may agree upon common arbitrators to hear all arbitrations, and these arbitrations shall proceed as consolidated.

(b) If parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate arbitrations arising out of those agreements, the court, upon application by a party, may do any of the following:

(1) Order the arbitrations consolidated on terms the court considers just and necessary;

(2) If all parties cannot agree on arbitrators for the consolidated arbitration, appoint arbitrators as provided by G.S. 50-45; and

(3) If all parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make other orders it considers necessary.

"§ 50-51. Award; costs.

(a) The award shall be in writing, dated and signed by the arbitrators joining in the award, with a statement of the place where the award was made. Where there is more than one arbitrator, the signatures of a majority of the arbitrators suffice, but the reason for any omitted signature shall be stated. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement. Time of delivery shall be computed from the date of personal delivery or date of mailing.

(b) Unless the parties agree otherwise, the award shall state the reasons upon which it is based.

(c) Unless the parties agree otherwise, the arbitrators may award interest as provided by law.

(d) The arbitrators in their discretion may award specific performance to a party requesting an award of specific performance when that would be an appropriate remedy.

(e) Unless the parties agree otherwise, the arbitrators may not award punitive damages. If arbitrators award punitive damages, they shall state the award in a record and shall specify facts justifying the award and the amount of the award attributable to punitive damages.

(f) Costs:

(1) Unless the parties otherwise agree, awarding of costs of an arbitration shall be in the arbitrators' discretion.
(2) In making an award of costs, the arbitrators may include any or all of the following as costs:
a. Fees and expenses of the arbitrators, expert witnesses, and translators;
b. Fees and expenses of counsel and of an institution supervising the arbitration, if any;
c. Any other expenses incurred in connection with the arbitration proceedings;
d. Sanctions awarded by the arbitrators or the court, including those provided by N.C.R. Civ. P. 11 and 37; and
e. Costs allowed by Chapters 6 and 7A of the General Statutes.
(3) In making an award of costs, the arbitrators shall specify each of the following:
a. The party entitled to costs;
b. The party who shall pay costs;
c. The amount of costs or method of determining that amount; and
d. The manner in which costs shall be paid.

(g) An award shall be made within the time fixed by the agreement. If no time is fixed by the agreement, the award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party.

"§ 50-52. Change of award by arbitrators.

On a party's application to the arbitrators or, if an application to the court is pending under G.S. 50-53 through G.S. 50-56, on submission to the arbitrators by the court under the conditions ordered by the court, the arbitrators may modify or correct the award upon grounds stated in subdivisions (1) and (3) of subsection (a) of G.S. 50-55, or clarify the award. The application shall be made within 20 days after delivery of the award to the opposing party, stating that the opposing party must serve objections to the application, if any, within 10 days from notice. An award modified or corrected under this section is subject to the provisions of G.S. 50-53 through G.S. 50-56.

"§ 50-53. Confirmation of award.

Upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-54. Vacating an award.

(a) Upon a party's application, the court shall vacate an award for any of the following reasons:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing the rights of a party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon a showing of sufficient cause for the postponement, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of G.S. 50-47;

(5) There was no arbitration agreement, the issue was not adversely determined in proceedings under G.S. 50-43, and the party did not participate in the arbitration hearing without raising the objection. The fact that the relief awarded either could not or would not be granted by a court is not a ground for vacating or refusing to confirm the award;

(6) The court determines that the award for child support or child custody is not in the best interest of the child. The burden of proof at a hearing under this subdivision is on the party seeking to vacate the arbitrator's award;

(7) The award included punitive damages, and the court determines that the award for punitive damages is clearly erroneous; or

(8) If the parties contract in an arbitration agreement for judicial review of errors of law in the award, the court shall vacate the award if the arbitrators have committed an error of law prejudicing a party's rights.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. If the application is predicated on corruption, fraud, or other undue means, it shall be made within 90 days after these grounds are known or should have been known.

(c) In vacating an award on grounds other than stated in subdivision (5) of subsection (a) of this section, the court may order a rehearing before arbitrators chosen as provided in the agreement, or in the absence of a provision regarding the appointment of arbitrators, by the court in accordance with G.S. 50-45, except in the case of a vacated award for child support or child custody in which case the court may proceed to hear and determine all such issues. The time within which the agreement requires an award to be made applies to the rehearing and commences from the date of the order.

(d) If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award and may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-55. Modification or correction of award.

(a) Upon application made within 90 days after delivery of a copy of an award to an applicant, the court shall modify or correct the award where at least one of the following occurs:

(1) There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them, and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify or correct the award to effect its intent and shall confirm the award as modified or corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(d) The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings.

"§ 50-56. Modification of award for alimony, postseparation support, child support, or child custody based on substantial change of circumstances.

(a) A court or the arbitrators may modify an award for postseparation support, alimony, child support, or child custody under conditions stated in G.S. 50-13.7 and G.S. 50-16.9 in accordance with procedures stated in subsections (b) through (f) of this section.

(b) Unless the parties have agreed that an award for postseparation support or alimony shall be nonmodifiable, an award by arbitrators for postseparation support or alimony under G.S. 50-16.2A, 50-16.3A, 50-16.4, or 50-16.7 may be modified if a court order for alimony or postseparation support could be modified pursuant to G.S. 50-16.9.

(c) An award by arbitrators for child support or child custody may be modified if a court order for child support or child custody could be modified pursuant to G.S. 50-13.7.

(d) If an award for modifiable postseparation support or alimony, or an award for child support or child custody, has not been confirmed pursuant to G.S. 50-53, upon the parties' agreement these matters may be submitted to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(e) If an award for modifiable postseparation support or alimony, or an award for child support or child custody has been confirmed pursuant to G.S. 50-53, upon the parties' agreement and joint motion, the court may remit these matters to arbitrators chosen by the parties as provided in G.S. 50-45, in which case G.S. 50-52 through G.S. 50-56 apply to this modified award.

(f) Except as otherwise provided in this section, the provisions of G.S. 50-55 apply to modifications or corrections of awards for postseparation support, alimony, child support, or child custody.

"§ 50-57. Orders or judgments on award.

Upon granting an order confirming, modifying, or correcting an award, an order or judgment shall be entered in conformity with the order and docketed and enforced as any other order or judgment. The court may award costs, as provided in G.S. 50-51(f), of the application and of proceedings subsequent to the application and disbursements.

"§ 50-58. Applications to the court.

Except as otherwise provided, an application to a court under this Article shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for making and hearing motions in civil actions. Unless the parties agree otherwise, notice of an initial application for an order shall be served in the manner provided by law for service of summons in civil actions.

"§ 50-59. Court; jurisdiction.

The term 'court' means a court of competent jurisdiction of this State. Making an agreement in this State described in G.S. 50-42 or any agreement providing for arbitration in this State or under its laws confers jurisdiction on the court to enforce the agreement under this Article and to enter judgment on an award under the agreement.

"§ 50-60. Appeals.

(a) An appeal may be based on failure to comply with the procedural aspects of this Article. An appeal may be taken from any of the following:

(1) An order denying an application to compel arbitration made under G.S. 50-43;

(2) An order granting an application to stay arbitration made under G.S. 50-43(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment entered pursuant to provisions of this Article.

(b) Unless the parties contract in an arbitration agreement for judicial review of errors of law as provided in G.S. 50-54(a), a party may not appeal on the basis that the arbitrator failed to apply correctly the law under Chapters 50, 50A, 52B, or 52C of the General Statutes.

(c) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

"§ 50-61. Article not retroactive.

This Article applies to agreements made on or after October 1, 1999, unless parties by separate agreement after that date state that this Article shall apply to agreements dated before October 1, 1999.

"§ 50-62. Construction; uniformity of interpretation.

Certain provisions of this Article have been adapted from the Uniform Arbitration Act in force in this State, the North Carolina International Commercial Arbitration and Conciliation Act, and Chapters 50, 50A, 50B, 51, 52, and 52C of the General Statutes. This Article shall be construed to effect its general purpose to make uniform provisions of these Acts and Chapters 50, 50A, 50B, 51, 52, 52B, and 52C of the General Statutes."

Section 2. G.S. 1-567.57(b) reads as rewritten:

"(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, ~~on~~ upon application by ~~one party with the consent of all the other parties to those arbitration agreements, may:~~ a party, may do any of the following:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary."

Section 3. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 494

Short Title: Uniform Child-Custody Act. (Public)

Sponsors: Representatives Hackney; Barefoot and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"Chapter 50A

"Uniform ~~Child-Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"Uniform Child-Custody Jurisdiction and Enforcement Act.

"Part 1. General Provisions.

"§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

"§ 50A-102. Definitions.

In this Article:

(1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
(2) 'Child' means an individual who has not attained 18 years of age.
(3) 'Child-custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
(4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.
(5) 'Commencement' means the filing of the first pleading in a proceeding.
(6) 'Court' means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
(7) 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
(8) 'Initial determination' means the first child-custody determination concerning a particular child.
(9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this Article.
(10) 'Issuing state' means the state in which a child-custody determination is made.
(11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
(12) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) 'Person acting as a parent' means a person, other than a parent, who:
a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.
(14) 'Physical custody' means the physical care and supervision of a child.
(15) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
(17) 'Warrant' means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

"§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

"§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

"§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

"§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

"§ 50A-107. Priority.

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

"§ 50A-108. Notice to persons outside State.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

"§ 50A-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State.

"§ 50A-110. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, 'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

"§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

"Part 2. Jurisdiction.

"§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

"§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

"§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

"**§ 50A-204. Temporary emergency jurisdiction.**

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

"**§ 50A-205. Notice; opportunity to be heard; joinder.**

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State.

"§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

"§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may

be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

"**§ 50A-208. Jurisdiction declined by reason of conduct.**

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child

and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this Article.

"**§ 50A-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying

information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

"§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

"Part 3. Enforcement.

"§ 50A-301. Definitions.

In this Part:

(1) 'Petitioner' means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) 'Respondent' means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

"§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

"§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The

remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

"§ 50A-304. Temporary visitation.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2. The order remains in effect until an order is obtained from the other court or the period expires.

"§ 50A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state.

"§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

"§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

"§ 50A-309. Service of petition and order.

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

"§ 50A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part.

"§ 50A-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
(2) Direct law enforcement officers to take physical custody of the child immediately; and
(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

"§ 50A-312. Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Article.

"§ 50A-313. Recognition and enforcement.

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this Article which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2.

"§ 50A-314. Appeals.

An appeal may be taken from a final order in a proceeding under this Part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under G.S. 50A-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

"§ 50A-315. Role of prosecutor or public official.

(a) In a case arising under this Article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this Part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:
(1) An existing child-custody determination;
(2) A request to do so from a court in a pending child-custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

"**§ 50A-316. Role of law enforcement.**

At the request of a prosecutor or other appropriate public official acting under G.S. 50A-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under G.S. 50A-315.

"**§ 50A-317. Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316."

Section 4. G.S. 1C-1702(1) reads as rewritten:

"(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~'support order,'~~ 'child-support order', as defined in G.S. ~~52A-3(14) (The Uniform Reciprocal Enforcement of Support Act)~~ 52C-1-101 or a 'custody decree,' as defined in G.S. ~~50A-2(4)~~ 50A-102. ~~(The Uniform Child Custody Jurisdiction Act).~~"

Section 5. G.S. 7B-1100(4), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 6. G.S. 7B-1101, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(7) That the petition has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 8. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes."

Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

"(4) Any information required by the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner;".

Section 10. G.S. 50-11.2 reads as rewritten:

"**§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.**

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. The jurisdictional requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a custody decree."

Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

"(2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-202, and 50A-204."

Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

"(1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. ~~50A-4.~~ 50A-205."

Section 13. G.S. 50-13.7 reads as rewritten:

"**§ 50-13.7. Modification of order for child support or custody.**

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Section 14. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Child-Custody Jurisdiction and Enforcement Act as the Revisor deems appropriate.

Section 15. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

NORTH CAROLINA
1899—1999
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UNIFORM CHILD CUSTODY ACT
House Bill 494

The North Carolina Bar Association and its Family Law Section ***recommend passage*** of House Bill 494, Uniform Child Custody Act which embodies the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The UCCJEA is a revision of the Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted in every state. The revision was necessary to bring the act into compliance with federal statutes such as the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act, and to bring consistency to varying court interpretations. The objective was to strengthen the impact of the UCCJA, which removed the legal incentives to take children across state lines for the purpose of relitigating custody disputes.

The UCCJA always provided that the principal place to make a child custody determination was the home state of the child. The "home state" was defined as the state where the child resided when the custody proceeding began, or the state where a parent resided if the child was absent but lived in a state within the previous six months. But, the UCCJA did not give a priority to the home state over the other states that had another basis for taking jurisdiction. The new UCCJEA established such a priority.

The UCCJEA provided that a state which made the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. Continuing exclusive jurisdiction was not a provision in the original UCCJA, though the subsequent federal PKPA recognized the concept. Under the new act, a state with continuing exclusive jurisdiction is the only state in which modification of a custody order can take place. If it determines that another state has a more significant connection to the child, the state with continuing exclusive jurisdiction may relinquish its authority.

Oklahoma enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) on June 10, 1998. It has been introduced in the legislatures of Alaska, California, Hawaii, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, Virginia, Washington, West Virginia, and the U.S. Virgin Islands.

Laura E. Hartsell, Assistant Director of Governmental Affairs
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ATTACHMENT X

HOUSE BILL 494:
Uniform Child-Custody Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 13, 1999	**Summary by:**	Susan L. Hayes
Version:	First Edition		Committee Counsel

Summary of significant changes made by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).**

Proceedings Covered

- Definition of the child custody proceedings covered by the Act is more expansive and more specific. Adoptions, juvenile delinquency, and contractual emancipation are specifically excluded.
- Act recognizes Indian tribes as "states" where the tribe acts in substantial conformity with this Act.
- Act recognizes foreign countries as "states" where the country acts in substantial conformity with this Act.

Initial Jurisdiction

- Gives priority to home state jurisdiction.
- Makes significant connection jurisdiction secondary to home state jurisdiction. A court may only exercise significant connection jurisdiction if the home state declines jurisdiction on inconvenient forum or misconduct grounds, or if there is no home state.
- The child's absence from the state does not defeat home state jurisdiction if a parent or a person acting as a parent continues to live in the state.

Modification Jurisdiction

- Exclusive continuing jurisdiction continues in a court that has made a custody determination consistent with the UCCJEA until: (1) neither the child, the child and a parent, nor the child and a person acting as a parent have a significant connection with the state and substantial evidence concerning the child is no longer available in the state; OR (2) the child, parents, and any person acting as a parent no longer live in the state.
- Another state may only modify a decree if the decree state no longer has exclusive continuing jurisdiction or the decree state has declined exclusive continuing jurisdiction.
- Courts have temporary emergency jurisdiction when a child who is in the state and has been abandoned, or an emergency makes it necessary to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. Any order under this provision is temporary until the appropriate state can enter a permanent order.

Declining Jurisdiction

- A court with initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction may decline jurisdiction based on an inconvenient forum. The issue may be raised on the court's own motion, the motion of a party, or at the request of another state. The parties are allowed to submit information in support of the motion and the court must consider all relevant factors, including whether domestic violence has occurred and is likely to continue in the future, and which state can best protect the parties and the child. Attorneys fees and expenses are no longer recoverable under this section.
- A court is required to decline to exercise jurisdiction if it has jurisdiction because a person seeking to invoke it has engaged in unjustifiable conduct. There are three exceptions: (1) the parents and all persons acting as parents acquiesce in the exercise of jurisdiction; (2) another court defers to this court on inconvenient forum grounds; and (3) no other court would have jurisdiction.

Judicial Communication and Cooperation

- Authorizes a court to communicate with a court in another state about any proceeding arising under the Act.
- Permits the taking of testimony in another state when a party, the child, or witnesses are located out of state.
- Authorizes courts to seek assistance from, or give assistance to, a court of another state, including holding an evidentiary hearing, ordering a person to produce or give evidence, ordering a custody evaluation, and ordering a party or any person having physical custody of the child to appear in the proceeding with or without the child.

Pleadings

- Requires certain information to be submitted to the court in the first pleading or attached affidavit to allow the court to determine its jurisdiction. The information includes the child's present address, as well as the present address of the persons with whom the child lives. The court may stay the proceeding until the information is provided.
- Requires a court to seal and not disclose identifying information to the other party or to the public, if the party alleges in an affidavit or pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosing the information.

Interstate Enforcement

- Mandates recognition and enforcement of child-custody determinations made in substantial conformity with the Act or made under factual circumstances meeting the jurisdictional standards of the Act.
- Custody determinations entitled to enforcement include temporary emergency orders, foreign custody orders, tribal court orders, registered orders, and the custody and visitation portions of a domestic violence civil protection order, assuming compliance with the jurisdiction and notice provisions of the Act. An order for return under the Hague Child Abduction Convention is also entitled to enforcement.
- Creates a registration process to secure an order confirming another state's custody order. A request for registration may be accompanies by a request for enforcement.

- Allows a court to issue a temporary order enforcing a visitation schedule made by a court of another state. Permanent changes in the order may only be made by a court that has jurisdiction to modify.

  An expedited procedure is established for the enforcement of child-custody determinations, providing for an enforcement hearing within twenty-four hours of service and which may result in an order authorizing the petitioner to take immediate physical custody of the child unless the respondent establishes one of the defenses specified in the statute. If the order has not been previously registered those defenses are: (1) whether the issuing court had jurisdiction to make the order; (2) whether the respondent received notice in accordance with the Act; and (3) whether the order has been vacated, stayed, or modified. If the order has been registered, only the third defense may be asserted.

- Establishes a procedure to protect the child and to secure the child's presence in the jurisdiction for an enforcement hearing by authorizing the court to issue a warrant to take physical custody of a child upon a finding that the child is imminently likely to suffer serious physical harm or be removed from the state.

- Allows prosecutors or other designated public officials, or law enforcement officers, at the request of the prosecutor or other public official, to take any lawful action to locate a child or a parent. All direct expenses and costs incurred by the prosecutor and law enforcement officers may be assessed against a nonprevailing respondent.

**Adapted from "The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act" by Patricia M. Hoff, published in Family Law Quarterly, Summer 1998.

HOUSE JUDICIARY I COMMITTEE

April 13, 1999

AGENDA

House Bill 316 – Prescribed Burning in Forests
Representative McComas

House Bill 494 – Uniform Child-Custody Act
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
April 13, 1999
Minutes

The House Judiciary I Committee met on Tuesday, April 13, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Vice Chairman Martin Nesbitt, and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Clary, Ellis, Insko, Miller, Moore, and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I).

Representative Owens was recognized to explain **House Bill 316, AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS**, (Attachment II). Representative Owens stated that the bill was an agency bill, and has the support of a number of organizations. He said that five southern states currently have this legislation in place. Representative Owens stated that the bill would not affect open burning or liability under the state's current laws, but would provide limited liability for smoke resulting from prescribed burning under the new requirements for planning and managing a burn.

Ms. Susan Hayes, Committee Counsel, was recognized for further explanation. A bill summary prepared by Ms. Hayes is attached, (Attachment III).

A handout distributed by the Division of Forest Resources is attached, (Attachment IV)

Ms. Angie McMillan, NC Chapter of the Nature Conservancy spoke in support of the legislation. She said that the Nature Conservancy uses this kind of procedure in land that it owns and protects.

Former Senator Jim Speed was recognized. He noted personal experiences with prescribed burning, and spoke in support of the bill.

Representative Ellis moved that the bill be given a favorable report.

Representative Blue asked if the Department of Environment and Natural Resources, (DENR) has a procedure in place to determine whether persons in the immediate vicinity of a prescribed burning may be impacted by smoke, such as one who suffers from asthma who lives within a close distance from a burn site.

Representative Owens replied that he was not sure if such a provision was in the bill, but that one would still have to obtain a permit just as with any other burn and would be subject to requirements set forth when obtaining a permit.

Mr. Stan Adams, Director, Division of Forest Resources, DNER, was recognized. Mr. Adams stated that a provision in the bill requires that persons within the immediate vicinity be notified prior to a burn.

Representative Nesbitt asked why a certified prescribed burner would not be required for the burning of forestland of less than 50 acres.

Mr. Adams replied that many landowners have burned for many years and are expert burners. He said that the bill would not exempt these uncertified burners from the requirements of following a plan prepared by a certified burner.

Representative Miller expressed concern regarding the immunity from liability provision of the bill.

Representative Nesbitt noted the possibility of smoke damage to nearby homes resulting from a prescribed burn.

Representative Ellis noted that currently a fire department may start a fire to burn back to forest fire in order to control the fire, and they assume no liability if they use acceptable fire-fighting tactics. He concluded that this bill would simply expand the number of people who can do this.

Representative Insko expressed concern regarding uncertified people performing these burns. She felt that the Division of Forest Resources should review and approve plans that a certified burner developed for a landowner's use.

There was discussion regarding wind conditions during a prescribed burning and the impact that prescribed burnings have on wildlife.

Representative Hackney questioned the possibility of limiting the bill to certified burners for a few years to see how it works. Mr. Adams replied that the bill that was introduced in the previous session did that. He said that Quails Unlimited advocated for people who had buned for many years, and felt that the requirement for them to go to a training session for several days would be an unnecessary imposition on the private landowner.

In order to address questions on the liability issue, Chairman Nesbitt stated that the bill would be held over for another meeting.

Representative Hackney was recognized for further discussion of **House Bill 494, AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES**, (Attachment V). The bill was explained during the April 8, 1999 meeting of the Judiciary I committee.

Mr. Peter Powell, Deputy Director, Administrative Officer of the Courts, was recognized and spoke briefly regarding "filing for registration" on page 12 of the bill. He said that the Uniform Enforcement Foreign Judgment Act requires that the person seeking enforcement is charged with the cost of the filing. Under this bill, the cost is shifted to the Clerk of Court. He said that the person seeking enforcement should bear this cost, and noted that the Bar Association did not oppose this change.

Representative Hackney asked that the bill be held over.

The meeting was adjourned at 11:00 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 13, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Adams	DENR - Forest Resources
Danny Bentley	" "
Jim Speed	Bonz. associates
Ted Tedell	AOC
Angie McMillan	The Nature Conservancy, NC Chapter
Brenda Summers	NC Equity
Deborah Ross	ACLU
Steve Woodson	NC Farm Bureau
Kim Hibbard	NCLM
Ruth	DOT
Rachel	DENR
Andre Mallory	Saint Augustine's College
Reshonda Rascoe	Saint Augustine's College
Mike Crocker	NCACSA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 316

Short Title: Prescribed Burning in Forests/AB. (Public)

Sponsors: Representatives McComas, Owens (Primary Sponsors); and Culp.

Referred to: Wildlife Resources, if favorable, Judiciary I.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and

animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 113-60.41. Definitions.

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

(2) 'Prescribed burning' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"§ 113-60.42. Immunity from liability.

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of Environment and Natural Resources. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment and Natural Resources. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under Article 4C of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of Environment and Natural Resources.

(5) Any rules adopted by the Division of Forest Resources, Department of Environment and Natural Resources, to implement this Article.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources, Department of Environment and Natural Resources, may adopt rules that govern prescribed burning under this Article.

"**§ 113-60.45. Exemption.**

This Article does not apply when the Secretary of Environment and Natural Resources has cancelled burning permits pursuant to G.S. 113-60.27 or prohibited all open burning pursuant to G.S. 113-60.25."

Section 2. This act becomes effective January 1, 2000.

HOUSE BILL 316:
Prescribed Burning in Forests/AB

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	McComas and Owens
Date:	April 13, 1999	**Summary by:**	Barbara Riley, Staff Attorney
Version:	1st Edition		Susan L. Hayes
			Committee Counsel

SUMMARY: ***House Bill 316 would add a new Article 4E to Chapter 113 of the General Statutes setting forth the conditions for conducting a "prescribed burning" of forestland and limiting the liability of landowners and their agents for nuisance and smoke damage from a properly conducted burning.***

BACKGROUND: A "prescribed burning" is a planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and environmental conditions, while following appropriate measures to confine the fire to a predetermined area and to accomplish the intended management objectives. The legislative findings contained in proposed G.S.113-60.40 establish that prescribed burning is a beneficial management tool that reduces the naturally occurring buildup of vegetative fuels thus reducing the risk and severity of wildfires and their damage. Prescibed burning is also found to benefit game, nongame and endangered species of wildlife by improving habitat, and to improve forestland by preparing sites for replanting and natural seeding, controlling insects and disease.

BILL ANALYSIS New G.S. 113-60.42 provides that a prescribed burning conducted pursuant to the the provisions of G.S. 113-60.43 does not constitute a public or private nuisance. A landowner or his agent conducting a prescribed burning in accordance with the statute shall not be not liable in a civil action for damages or injury resulting from smoke . The limitation on liability does not apply, however, where the nuisance or damage results from the negligent or improper conduct of the prescribed burning.

G.S. 113-60.43 sets forth the guidelines for a prescribed burning. Subsection (a) requires that a prescription for a prescribed burning must be prepared by a certified prescribed burner and be filed with the Division of Forest Resources prior to the burn. A certified prescribed burner is an individual who has successfully completed a certification program approved by the Division of Forest Resources. G.S. 113-60.41(1). The prescription shall include:

1. The landowner's name and address.
2. A description of the area to be burned.
3. A map of the area.
4. An estimate of the fuel tonnage in the area.
5. The objectives of the prescibed burning.
6. A list of acceptable weather conditions for the burning.
7. The certified burner responsible for the burning.
8. A summary of the methods used to start, control, and extinguish the burn.

9. Provision for reasonable notice to homes and businesses in the area.

The prescribed burning must be conducted by the certified prescribed burner who shall be present on site and in charge throughout the burn. An exception to this provision allows a landowner to conduct the prescribed burning when the forestland acreage to be burned is less than 50 acres and the landowner conducts the prescribed burning according to a prescription prepared by a certified prescription burner.

The landowner or his agent must obtain an open burning permit from the Division of Forest Resources. The prescribed burning also must be conducted in accordance with the terms of the open burning permit, all State air pollution control statutes, local open burning ordinances, the voluntary smoke management guidelines set by the Division of Forest Resources, and any rules the Division adopts to implement this Article.

The terms of this article are not applicable when the Secretary of DENR has cancelled burning permits or prohibited all open burning.

The act becomes effective January 1, 2000.

3/16/99

Division of Forest Resources

Question and Answer Sheet
S.B. 247 & H.B. 316

Prescribed Burning in Forests/AB

NARRATIVE: This bill would not affect open burning or liability under the State's current laws. However, the bill would provide limited liability from smoke resulting from prescribed burning under new requirements for planning and managing a burn. Prescribed fire (planned reduction of forest fuels, under prescription, using controlled burning) is used to reduce the occurrence and destruction of forest land and woodland homes from uncontrolled forest fires, promotes habitats for plants and animals, reduces forest insect and disease populations, prepares harvested forest areas for natural or artificial regeneration and improves private woodlands multi-use potentials.

Q – Why should we promote the use of prescribed burning in N.C.?
A – Prescribed fire is used to reduce the danger to forest land and woodland homes from uncontrolled forest fires, to improve habitat for many plants and animals and to reduce forest insect and disease populations. It also is a very efficient and effective way to prepare harvested forest areas for natural or artificial regeneration. Much of North Carolina historically is a fire dependent ecosystem. Effective fire suppression has reduced many of the fire dependent species. Prescribed Burning is needed to retain or regain these important ecosystems.

Q – Would an individual be required to burn only under this law?
A – No. Only if the individual wished to have his/her smoke liability reduced.

Q – What is a certified burner?
A – A landowner, forestry or wildlife consultant, private industry representative or other individual who completes a certified burner training program, designed and conducted by the NC Division of Forest Resources.

Q – What does the certified burner training consist of?
A – The certified burner training would follow similar training criteria as the existing Burning Manager program in use by the NC Division of Forest Resources. It involves classroom training and actual field application experience in fire behavior, weather parameters, forest fuel types and other pertinent factors in prescribed burning.

Q – Why is it necessary to include limited immunity from liability in the bill?
A – Without any type of liability exclusion, there is no incentive to have a certified prescribed burner conducting a burn. Burning can presently be conducted by and would continue to be conducted by any individual who obtains a valid burning permit, under the state's current law.

Q – What restrictions must a certified burner comply with prior to and during a burn?
A – Must have completed the certified burner training program; must obtain a valid burning permit and notify nearby homes and business; must comply with smoke management guidelines including the requirement that smoke sensitive areas not be impacted; must ensure that weather conditions prescribed in the burning plan are present during the burning; must comply with Environmental Management rules and regulations; must comply with all local ordinances and must stay with the burn until the burn is complete.

Q – Does limited immunity from liability from smoke relieve the certified burner from damage caused by the actual burn?
A – No.

Q – Who is liable if negligence is found or improper execution of the burn takes place?
A – The person who conducts the prescribed burn. This would be the landowner if the landowner is the certified burner conducting the burn. Otherwise the prescribed burner would be liable.

Q- Why is this bill not scheduled to take effect until January 1, 2000?
A – The scheduled effective date for this bill gives the Division of Forest Resources time to provide burner certification courses and to prepare operationally to support this effort.

Q – Why does the bill offer provision for landowners burning less than 50 acres?
A – This special case does not exempt anyone from following the exact same standards of burning that all must follow. All it does is allow a landowner burning 50 acres or less on his/her own property to follow a burning plan developed by another certified burner instead of having to personally go through the training on how to develop a plan.

Q – Will this bill promote open burning to the detriment of our environment, specifically air quality?
A – A large part of the burner certification training deals with effective smoke management. By choosing best weather parameters and burning methods, impact of the smoke can be controlled. Prescribed burns almost always result in less smoke than wildfires of the same size. It is advantageous to release smoke into the atmosphere at a time we can control its amount, direction and duration, thus reducing the forest fuels that could support a wildfire and its huge amount of uncontrolled smoke. The multiple benefits from properly executed prescribed burns far exceed the limited inconvenience.

Q – Will this bill prevent me from contracting the NCFS to do my burning as in the past?
A – No, the Division of Forest Resources will continue to contract prescribed burning as in the past. It is hoped that this bill will stimulate those landowners who have the capability to conduct their own burns.

Q – How does this bill affect wildlife?
A – Wildlife habitat and forage are improved by burning as nutrients are cycled back into the soil and vegetation that grows after a fire often attracts more animals to browse.

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Division of Forest Resources

S.B. 247 & H.B. 316

Prescribed Burning in Forests/AB

Organizations/Groups in support of this bill:

Quail Unlimited, Inc.
Nature Conservancy
Farm Bureau
NC Forest Landowners Association
Wildlife Resources Commission
NC Forestry Association
NC Society of American Foresters
NC Wildlife Federation

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 494

Short Title: Uniform Child-Custody Act. (Public)

Sponsors: Representatives Hackney; Barefoot and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"Chapter 50A

"Uniform ~~Child-Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"Uniform Child-Custody Jurisdiction and Enforcement Act.

"Part 1. General Provisions.

"§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

"§ 50A-102. Definitions.

In this Article:

(1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
(2) 'Child' means an individual who has not attained 18 years of age.
(3) 'Child-custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
(4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.
(5) 'Commencement' means the filing of the first pleading in a proceeding.
(6) 'Court' means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
(7) 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
(8) 'Initial determination' means the first child-custody determination concerning a particular child.
(9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this Article.
(10) 'Issuing state' means the state in which a child-custody determination is made.
(11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
(12) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) 'Person acting as a parent' means a person, other than a parent, who:
a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.
(14) 'Physical custody' means the physical care and supervision of a child.
(15) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
(17) 'Warrant' means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

"§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

"§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

"§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

"§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

"**§ 50A-107. Priority.**

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

"**§ 50A-108. Notice to persons outside State.**

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

"**§ 50A-109. Appearance and limited immunity.**

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State.

"**§ 50A-110. Communication between courts.**

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, 'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

"§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

"Part 2. Jurisdiction.

"§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

"§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

"§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

"**§ 50A-204. Temporary emergency jurisdiction.**

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

"**§ 50A-205. Notice; opportunity to be heard; joinder.**

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State.

"§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

"§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may

be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

"**§ 50A-208. Jurisdiction declined by reason of conduct.**

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child

and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this Article.

"**§ 50A-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying

information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

"§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

"Part 3. Enforcement.

"§ 50A-301. Definitions.

In this Part:

(1) 'Petitioner' means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) 'Respondent' means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

"§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

"§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The

remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

"**§ 50A-304. Temporary visitation.**

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2. The order remains in effect until an order is obtained from the other court or the period expires.

"**§ 50A-305. Registration of child-custody determination.**

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state.

"§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

"§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

"**§ 50A-309. Service of petition and order.**

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

"**§ 50A-310. Hearing and order.**

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part.

"**§ 50A-311. Warrant to take physical custody of child.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(7) That the petition has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 8. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes."

Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

"(4) Any information required by the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner;".

Section 10. G.S. 50-11.2 reads as rewritten:

"§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. The jurisdictional requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a custody decree."

Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

"(2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-202, and 50A-204."

Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

"(1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. ~~50A-4.~~ 50A-205."

Section 13. G.S. 50-13.7 reads as rewritten:

"§ 50-13.7. Modification of order for child support or custody.

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Section 14. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Child-Custody Jurisdiction and Enforcement Act as the Revisor deems appropriate.

Section 15. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

HOUSE JUDICIARY I COMMITTEE

1999-2000 SESSION

MINUTES

April 15, 1999 – April 26, 1999

HOUSE JUDICIARY I COMMITTEE

April 15, 1999

AGENDA

House Bill 494 - Uniform Child-Custody Act
Representative Hackney

House Bill 884 - Matthew Shepard Memorial Act
Representatives Luebke and Insko

House Bill 924 - Community Mediation Centers
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 15, 1999
Minutes

The House Judiciary I Committee met on Thursday, April 15, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney, and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Insko, Miller, Moore, Nesbitt, and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I).

Representative Nesbitt presided over the first part of the meeting

The first bill to be discussed was **House Bill 494, AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES**, (Attachment II). The bill was explained and discussed during the April 8 and April 13, 1999 meetings of the committee. A staff explanation, prepared by Ms. Susan Hayes, Committee Counsel, and a summary prepared by the North Carolina Bar Association are included in the attachments to these minutes, (Attachments III and IV). Representative Hackney was recognized and noted that a problem had been brought to the attention of the committee by the Administrative Office of the Courts regarding who would pay for costs incurred in the filing of a proceeding. He offered an amendment, (Attachment V), which would require the petitioner to serve notice, and moved adoption of the amendment. The amendment was adopted. He offered a second amendment, (Attachment VI), and asked that Ms. Susan Hayes, Committee Counsel, be recognized for its explanation.

Ms. Hayes stated that the technical amendment addresses a portion of the bill that has already been amended during this session by the Domestic Violence Act. Representative Hackney moved adoption of the amendment. The amendment was adopted.

Representative Insko moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment VII). A copy of the committee substitute is attached, (Attachment VIII).

Chairman Hackney presided over the next portion of the meeting. He recognized Representative Nesbitt to explain **House Bill 924, AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS**, (Attachment IX). Representative Nesbitt stated that the bill would provide for the establishment of state policy to encourage the creation and use of community mediation centers. The centers would function as non-profit organizations, and chief district court judges would be directed to encourage mediation in any criminal or civil district court action for which a judge determined mediation to be an appropriate alternative.

A summary prepared by Ms. Hayes and a handout from the Administrative Office of the Courts are included in the attachments, (Attachments X and XI).

Mr. Scott Bradley, Mediation Network of North Carolina gave further explanation of the bill and responded to questions.

Ms. Melissa Johnson, Blue Ridge Dispute settlement Center, Boone, NC, responded to questions.

Representative Miller was asked to preside for the remainder of the meeting.

Representative Nesbitt offered a technical amendment, (Attachment XII), and moved its adoption. Ms. Hayes explained the amendment. Upon vote of the committee, the amendment was adopted. A second amendment was offered by Representative Nesbitt, (Attachment XIII), who moved its adoption. Ms. Hayes stated that the amendment adds a section in the definition section of the bill regarding the practice of counseling. Following brief discussion, the amendment was adopted.

Representative Hackney offered an amendment regarding the effective date of the bill, (Attachment XIV). Ms. Hayes stated that the amendment would negate an amendment that was already adopted, but that she could correct it. Representative Miller requested a motion to accept the amendment regarding the effective date, and to authorize the Committee Counsel to prepare the appropriate language. Representative Alexander so moved, and the amendment was adopted.

Representative Nesbitt offered an amendment, (Attachment XV), and moved its adoption. The amendment was adopted.

Representative Moore moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment XVI). A copy of the committee substitute is included in the attachments to these minutes, (Attachment XVII).

The meeting was adjourned at 11:00.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 15, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dr. Janet Joyner	Retired educator, 4178 Lytchfield Ct. Winston-Salem, NC 27104
Diana Singles	Mediation Services of Wake Inc. Raleigh, NC
Melissa Johnson	Blue Ridge Dispute Settlement Center, Inc. 168 4th St., Boone, NC 28607
Matt Osborne	AOC
Pamela Weaver Best	AOC
Hunter Conn	N/A Carrboro, NC
Rob Holliday	Rep. Luebke
Norma Bowen	Rep Luebke
George Reed	NC Council of Churches
	NCFPC
Chris Denson	NCFPC
Johnny Henderson	CMHC
A T Burnette	GACPD
Dianne Beasley	Forestry

VISITOR REGISTRATION SHEET

J-1
Name of Committee

4-15-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Scott Bradley	Mediation Network of NC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 494

Short Title: Uniform Child-Custody Act. (Public)

Sponsors: Representatives Hackney; Barefoot and Gardner.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"Chapter 50A

"Uniform ~~Child-Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"Uniform Child-Custody Jurisdiction and Enforcement Act.

"Part 1. General Provisions.

"§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

"§ 50A-102. Definitions.

In this Article:

(1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
(2) 'Child' means an individual who has not attained 18 years of age.
(3) 'Child-custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
(4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.
(5) 'Commencement' means the filing of the first pleading in a proceeding.
(6) 'Court' means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
(7) 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
(8) 'Initial determination' means the first child-custody determination concerning a particular child.
(9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this Article.
(10) 'Issuing state' means the state in which a child-custody determination is made.
(11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
(12) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) 'Person acting as a parent' means a person, other than a parent, who:
a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.
(14) 'Physical custody' means the physical care and supervision of a child.
(15) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
(17) 'Warrant' means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

"§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

"§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

"§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

"§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

"**§ 50A-107. Priority.**

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

"**§ 50A-108. Notice to persons outside State.**

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

"**§ 50A-109. Appearance and limited immunity.**

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State.

"**§ 50A-110. Communication between courts.**

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, 'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

"§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

"Part 2. Jurisdiction.

"§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

"§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

"§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

"§ 50A-204. Temporary emergency jurisdiction.

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

"§ 50A-205. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State.

"§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

"§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may

be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

"**§ 50A-208. Jurisdiction declined by reason of conduct.**

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child

and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this Article.

"**§ 50A-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying

information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

"§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

"Part 3. Enforcement.

"§ 50A-301. Definitions.

In this Part:

(1) 'Petitioner' means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) 'Respondent' means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

"§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

"§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The

remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

"§ 50A-304. Temporary visitation.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2. The order remains in effect until an order is obtained from the other court or the period expires.

"§ 50A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state.

"§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

"§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

"§ 50A-309. Service of petition and order.

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

"§ 50A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part.

"§ 50A-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
(2) Direct law enforcement officers to take physical custody of the child immediately; and
(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

"§ 50A-312. Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Article.

"§ 50A-313. Recognition and enforcement.

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this Article which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2.

"§ 50A-314. Appeals.

An appeal may be taken from a final order in a proceeding under this Part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under G.S. 50A-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

"§ 50A-315. Role of prosecutor or public official.

(a) In a case arising under this Article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this Part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;
(2) A request to do so from a court in a pending child-custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

"**§ 50A-316. Role of law enforcement.**

At the request of a prosecutor or other appropriate public official acting under G.S. 50A-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under G.S. 50A-315.

"**§ 50A-317. Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316."

Section 4. G.S. 1C-1702(1) reads as rewritten:

"(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~'support order,'~~ 'child-support order', as defined in G.S. ~~52A-3(14) (The Uniform Reciprocal Enforcement of Support Act)~~ 52C-1-101 or a 'custody decree,' as defined in G.S. ~~50A-2(4)~~ 50A-102. ~~(The Uniform Child Custody Jurisdiction Act).~~"

Section 5. G.S. 7B-1100(4), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 6. G.S. 7B-1101, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(7) That the petition has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 8. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes."

Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

"(4) Any information required by the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner;".

Section 10. G.S. 50-11.2 reads as rewritten:

"**§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.**

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. The jurisdictional requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a custody decree."

Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

"(2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-202, and 50A-204."

Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

"(1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. ~~50A-4.~~ 50A-205."

Section 13. G.S. 50-13.7 reads as rewritten:

"**§ 50-13.7. Modification of order for child support or custody.**

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Section 14. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Child-Custody Jurisdiction and Enforcement Act as the Revisor deems appropriate.

Section 15. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

HOUSE BILL 494:
Uniform Child-Custody Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	March 23, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 494 enacts the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) and repeals the existing Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA is based on a recommended uniform state law promulgated by the National Conference of Commissioners on Uniform State Laws. The UCCJEA would clarify some of the troublesome decisions that have resulted from differences between the UCCJA and the federal Parental Kidnapping Prevention Act.***

BILL ANALYSIS:

Section 1 repeals the existing sections of Chapter 50A that are the UCCJA.

Section 2 amends the title of Chapter 50A to the Uniform Child-Custody Jurisdiction and Enforcement Act.

Section 3 adds a new Article 2 to Chapter 50A, the UCCJEA, as follows:

Part 1. General Provisions.

50A-101. Short title.

50A-102. Definitions.

50A-103. Proceedings governed by other law

Provides that Act does not apply to adoption proceedings or proceedings for emergency medical care for a child.

50A-104. Application to Indian tribes.

Provides that child custody proceedings regarding Indian children are not subject to this Act to the extent that they are governed by the Indian Child Welfare Act. Also provides for recognition of a tribe as a state in applying Parts 1 and 2 of this Act, and recognition and enforcement under Part 3, of child custody determinations made by a tribe under substantial conformity with this Act.

50A-105. International application of Article.

Requires a court to treat a foreign country as a state in applying Parts 1 and 2 of this Act, and requires recognition and enforcement under Part 3 of a child custody determination made by a foreign country under substantial conformity with this Act, except where the child custody law of a foreign country violates fundamental principles of human rights.

50A-106. Effect of child-custody determination.

Order is binding upon all parties served and given an opportunity to be heard.

50A-107. Priority.

Questions of jurisdiction must be expedited.

50A-108. Notice to persons outside State.

Notice may be given in the manner allowed by this State for service of process or by the law of the state in which the service is made.

50A-109. Appearance and limited immunity.

Provides that a party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity.

50A-110. Communication between courts.

Authorizes a court to communicate with another court concerning any proceeding arising under this Act. Requires that a record be maintained of the communication except when it is about inconsequential matters such as calendaring.

50A-111. Taking testimony in another state.

Allows the testimony of someone in another state to be taken pursuant to existing State rules.

50A-112. Cooperation between courts; preservation of records.

Provides mechanisms for courts to cooperate with each other, request assistance from courts of other states and assist courts of other states.

Part 2. Jurisdiction.

50A-201. Initial child-custody jurisdiction.

Provides mandatory jurisdictional rules for the original child custody proceeding. A court has jurisdiction if one of the following apply:

1) The State is the home state of the child on the date of the start of the proceedings or was the home state within 6 months prior and a parent continues to live in the state.
2) There is no home state or the home state declines jurisdiction because this state is more appropriate, and the child and at least one parent have a significant connection with this state, and substantial evidence is available in this state.
3) All courts having jurisdiction under (1) or (2) have declined jurisdiction because this is the more appropriate state.
4) No court of another state would have jurisdiction under (1), (2), or (3).

50A-202. Exclusive, continuing jurisdiction.

Provides that the original determining state continues to have exclusive jurisdiction until either that court determines that there is no longer a substantial connection to that state on the part of any party to the action and substantial evidence is no longer present in that State, or a court determines that all parties involved no longer reside in that state.

50A-203. Jurisdiction to modify determination.

Provides that only the issuing state may modify a child custody determination unless that state has jurisdiction to make an initial determination and (i) the other state determines it no longer has exclusive continuing jurisdiction or that the new state is more convenient, or (ii) a court determines that all parties involved no longer reside in the original state.

50A-204. Temporary emergency jurisdiction.

Provides for temporary emergency jurisdiction if the child is present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. If there

is pending proceeding or existing order in another state any order under this section shall be given a set time period, deemed sufficient by the court for a permanent order to be issued by the original court.

50A-205. Notice; opportunity to be heard; joinder.

Requires notice and an opportunity to be heard be given to all parties before a child custody determination is made.

50A-206. Simultaneous proceedings.

Provides that one state cannot exercise jurisdiction if at the time of the commencement of the proceeding another proceeding has already been commenced in another state having jurisdiction.

50A-207. Inconvenient forum.

Allows a court to decline to exercise jurisdiction because another state is a more convenient forum.

50A-208. Jurisdiction declined by reason of conduct.

Allows a state to decline jurisdiction because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct.

50A-209. Information to be submitted to court.

Requires each party to provide certain information in their first pleading, under oath, including the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period, as well as information regarding any other proceedings that have occurred or are pending which may affect the current proceeding. This section contains a provision for confidentiality of some of the required information.

50A-210. Appearance of parties and child.

Authorizes the court to order a party in that state to appear before the court with or without the child, to order a person in that state with physical custody of the child to appear with the child, and to notify a person outside the state that they should appear with or without the child and that failure to appear may result in a decision adverse to their position.

Part. 3. Enforcement.

50A-301. Definitions.

50A-302. Enforcement under Hague Convention.

Provides for enforcement of an order made under the Hague Convention on the Civil Aspects of International Child Abduction.

50A-303. Duty to enforce.

Courts shall enforce child custody determinations of another state if jurisdiction was exercised in substantial conformity with this Act.

50A-304. Temporary visitation.

A court without jurisdiction to modify a child custody determination may issue a temporary order enforcing a visitation schedule made by a court of another state, or the visitation provisions of a determination that does not provide for a specific visitation schedule.

50A-305. Registration of child-custody determination.

Provides a procedure for the registration of out of state orders in another state. Notice of the registration must be served on the non-registering party and the registration may be objected to within 20 days of the notice on the grounds that the order to be registered is invalid.

50A-306. Enforcement of registered determination.

Provides for enforcement of an out of state order as if it were an order issued by the registering state.

50A-307. Simultaneous proceedings.

If a court in one state has a proceeding for enforcement and another state has a pending proceeding to modify the determination, the enforcing state must immediately communicate with the modifying state.

50A-308. Expedited enforcement of child-custody determination.

Provides a means for petition for enforcement of a registered order.

50A-309. Service of petition and order.

Requires service of a petition and order of enforcement.

50A-310. Hearing and order.

Provides for a hearing upon petition for enforcement.

50A-311. Warrant to take physical custody of child.

Allows the court to issue a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from the state. Such a warrant may allow law enforcement officers to enter private property if a less intrusive remedy is not effective, or if required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

50A-312. Cost, fees, and expenses.

Requires the court to award the prevailing party necessary and reasonable expenses incurred, unless the other party can establish that the award would be clearly inappropriate.

50A-313. Recognition and enforcement.

Full faith and credit shall be given to out of state orders issued consistent with this Act.

50A-314. Appeals.

Provides for expedited appeal of an enforcement proceeding.

50A-315. Role of prosecutor or public official.

Allows a prosecutor or other appropriate public official to take any lawful action to locate a child, obtain the return of a child or enforce a child custody determination under certain conditions.

50A-316. Role of law enforcement.

Allows law enforcement to take lawful action necessary to locate a child or a party at the request of a prosecutor or other appropriate public official.

50A-317. Costs and expenses.

Allows the court to assess the expenses of the prosecutor or other public official against the respondent if the respondent is not the prevailing party.

Sections 4-13 make conforming changes to other existing statutes.

Section 14 allows the Revisor of Statutes to print relevant portions of the official comments to the UCCJEA as the Revisor deems appropriate.

Section 15 makes this act effective October 1, 1999.

NORTH CAROLINA
1899–1999
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UNIFORM CHILD CUSTODY ACT
House Bill 494

The North Carolina Bar Association and its Family Law Section ***recommend passage*** of House Bill 494, Uniform Child Custody Act which embodies the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The UCCJEA is a revision of the Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted in every state. The revision was necessary to bring the act into compliance with federal statutes such as the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act, and to bring consistency to varying court interpretations. The objective was to strengthen the impact of the UCCJA, which removed the legal incentives to take children across state lines for the purpose of relitigating custody disputes.

The UCCJA always provided that the principal place to make a child custody determination was the home state of the child. The "home state" was defined as the state where the child resided when the custody proceeding began, or the state where a parent resided if the child was absent but lived in a state within the previous six months. But, the UCCJA did not give a priority to the home state over the other states that had another basis for taking jurisdiction. The new UCCJEA established such a priority.

The UCCJEA provided that a state which made the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. Continuing exclusive jurisdiction was not a provision in the original UCCJA, though the subsequent federal PKPA recognized the concept. Under the new act, a state with continuing exclusive jurisdiction is the only state in which modification of a custody order can take place. If it determines that another state has a more significant connection to the child, the state with continuing exclusive jurisdiction may relinquish its authority.

Oklahoma enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) on June 10, 1998. It has been introduced in the legislatures of Alaska, California, Hawaii, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, Virginia, Washington, West Virginia, and the U.S. Virgin Islands.

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ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 494

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

H494-ASA-030

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Hackney

moves to amend the bill on page 12, lines 33-34,
by rewriting the line to read:
"(2) Direct the petitioner to serve notice upon the persons named pursuant to subsection (a)(3), including notice of their opportunity to contest the registration in"

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 494

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

H494-ASA-031

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Hackney

moves to amend the bill on page 17, lines 17-23, by rewriting the lines to read:

"(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a 'child support order,' as defined in G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a 'custody decree,' as defined in ~~G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction Act),~~ G.S. 50A-102 (The Uniform Child-Custody Jurisdiction and Enforcement Act), or a domestic violence protective order as provided in G.S. 50B-4(d)."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 494 A BILL TO BE ENTITLED AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

☐ 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

HOUSE BILL 494
Proposed Committee Substitute H494-PCS1205-SA

Short Title: Uniform Child-Custody Act. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"Chapter 50A.

"Uniform ~~Child-Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"Uniform Child-Custody Jurisdiction and Enforcement Act.

"Part 1. General Provisions.

"**§ 50A-101. Short title.**

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

"**§ 50A-102. Definitions.**

In this Article:

(1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
(2) 'Child' means an individual who has not attained 18 years of age.
(3) 'Child-custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
(4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.
(5) 'Commencement' means the filing of the first pleading in a proceeding.
(6) 'Court' means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
(7) 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
(8) 'Initial determination' means the first child-custody determination concerning a particular child.
(9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this Article.
(10) 'Issuing state' means the state in which a child-custody determination is made.
(11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
(12) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) 'Person acting as a parent' means a person, other than a parent, who:
a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.
(14) 'Physical custody' means the physical care and supervision of a child.
(15) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
(17) 'Warrant' means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

"§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

"§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

"§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

"§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

"§ 50A-107. Priority.

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

"§ 50A-108. Notice to persons outside State.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

"§ 50A-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State.

"§ 50A-110. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, 'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

"§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

"Part 2. Jurisdiction.

"§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

"§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

"§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

"§ 50A-204. Temporary emergency jurisdiction.

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

"§ 50A-205. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State.

"§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

"§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may

be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

"§ 50A-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child

and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this Article.

"**§ 50A-209. Information to be submitted to court.**

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivisions (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying

information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

"§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

"Part 3. Enforcement.

"§ 50A-301. Definitions.

In this Part:

(1) 'Petitioner' means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) 'Respondent' means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

"§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

"§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The

remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

"§ 50A-304. Temporary visitation.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subdivisions (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2. The order remains in effect until an order is obtained from the other court or the period expires.

"§ 50A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Direct the petitioner to serve notice upon the persons named pursuant to subdivison (a)(3), including notice of their opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state.

"§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

"§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

"§ 50A-309. Service of petition and order.

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

"§ 50A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part.

"§ 50A-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
(2) Direct law enforcement officers to take physical custody of the child immediately; and
(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

"**§ 50A-312. Costs, fees, and expenses.**

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Article.

"**§ 50A-313. Recognition and enforcement.**

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this Article which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2.

"**§ 50A-314. Appeals.**

An appeal may be taken from a final order in a proceeding under this Part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under G.S. 50A-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

"**§ 50A-315. Role of prosecutor or public official.**

(a) In a case arising under this Article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this Part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;
(2) A request to do so from a court in a pending child-custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

"§ 50A-316. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under G.S. 50A-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under G.S. 50A-315.

"§ 50A-317. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316."

Section 4. G.S. 1C-1702(1) reads as rewritten:

"(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a 'child support order,' as defined in G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a 'custody decree,' as defined in ~~G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction Act);~~ G.S. 50A-102 (The Uniform Child-Custody Jurisdiction and Enforcement Act), or a domestic violence protective order as provided in G.S. 50B-4(d)."

Section 5. G.S. 7B-1100(4), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 6. G.S. 7B-1101, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-1101. Jurisdiction.

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall

be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(7) That the petition has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 8. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes."

Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

"(4) Any information required by the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner;".

Section 10. G.S. 50-11.2 reads as rewritten:

"§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. The jurisdictional requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a custody decree."

Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

"(2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-202, and 50A-204."

Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

"(1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. ~~50A-4.~~ 50A-205."

Section 13. G.S. 50-13.7 reads as rewritten:

"**§ 50-13.7. Modification of order for child support or custody.**

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Section 14. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Child-Custody Jurisdiction and Enforcement Act as the Revisor deems appropriate.

Section 15. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 924*

Short Title: Community Mediation Centers. (Public)

Sponsors: Representatives Nesbitt, Neely (Primary Sponsors); Alexander, Baddour, Bridgeman, Buchanan, Cansler, Cole, Cunningham, Easterling, Esposito, Hackney, Hensley, Hill, Hurley, Insko, Kiser, Luebke, McMahan, Miller, Morris, Oldham, Owens, Redwine, Setzer, Sherrill, Teague, Thompson, Tucker, Wainwright, Walend, C. Wilson, and Womble.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.5. Community mediation centers.**

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

(c) Each chief district court judge shall encourage mediation for any criminal or civil district court action pending in the district for which the judge determines that mediation is an appropriate alternative."

Section 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the drafting of memoranda of understanding or resolution agreements by mediators at community mediation centers authorized by G.S. 7A-38.5."

Section 3. Chapter 8 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Mediation Negotiations.

"**§ 8-110. Inadmissibility of negotiations.**

(a) Evidence of statements made and conduct occurring during a mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(b) No mediator or staff at a community mediation center authorized by G.S. 7A-38.5 shall be compelled to testify or produce evidence concerning statements made and conduct occurring during mediation at the community mediation center in any legal proceeding, except as to communications in furtherance of a crime or fraud. Nothing in this subsection shall be construed to permit a person to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of G.S. 7A-543 or G.S. 108A-102."

Section 4. This act is effective when it becomes law.

HOUSE BILL 924:
Community Mediation Centers

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Nesbitt
Date:	April 15, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 924 establishes a state policy to encourage the use of community mediation centers and make some provisions regarding the use of the centers.***

BILL ANALYSIS: House Bill 924 creates a new G.S. 7A-38.5 to establish a state policy encouraging the creation and use of community mediation centers. Courts, law enforcement agencies and other public entities may refer disputes to the centers. Chief district court judges are directed to encourage mediation for any criminal or civil district court action pending for which the judge determines mediation is an appropriate alternative.

Mediation centers are exempted from the definition of "practicing law" when drafting memoranda of understanding or resolution agreements resulting from the mediation.

Statements made and conduct occurring during a mediation is not subject to discovery and is inadmissible in the actual court proceeding. No mediator or staff of a community mediation center may be compelled to testify or produce evidence concerning the mediation except as to communications in furtherance of a crime or fraud.

House Bill 924 is effective when it becomes law.

Annual Report on the Funding and Activities of the Local Dispute Settlement Centers for the Fiscal Year 1997-1998 (N.C.G.S. § 7A-346.1)

EXECUTIVE SUMMARY

Summary Statement:

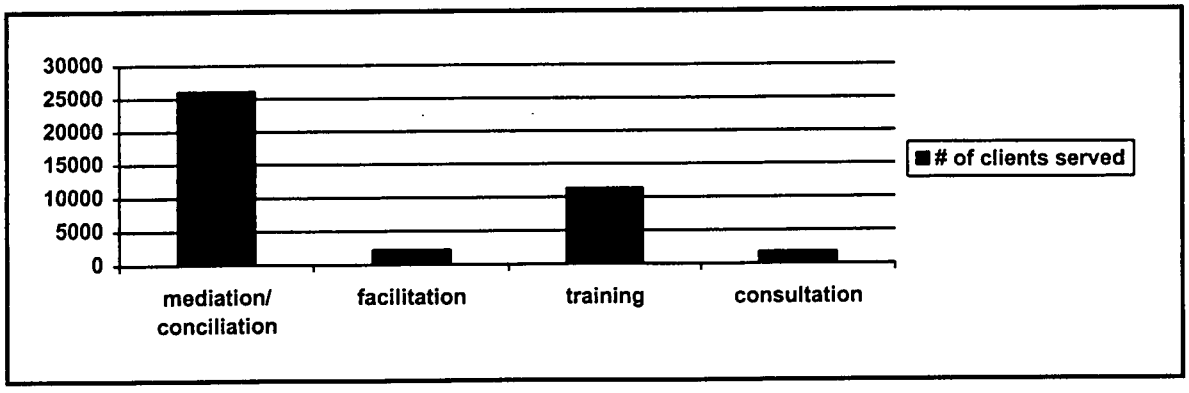
During the Fiscal Year 1997-1998, twenty-six State-funded dispute settlement centers served sixty-five counties and more than 42,600 persons through a variety of initiatives. The predominant services provided by the centers were mediation and conciliation. Both are methods of dispute resolution in which a neutral mediator (or team of mediators) assists the parties to a dispute in reaching their own resolution of the problem. During the past fiscal year, the centers mediated or conciliated more than 10,300 disputes, most of which were criminal cases and most of which were referred by a court official. To support their efforts, the centers relied heavily on appropriations from the General Assembly, but obtained additional funding from a variety of sources. The centers also received the assistance of more than 1400 volunteers who provided over 36,000 hours of service to the centers. As they look toward the Fiscal Year 1998-1999, the centers envision expanding their services in a variety of areas, but with a particular focus on programs for youth and families.

General Information:

- total number of centers that received a State appropriation: 27
- number of centers that provided services: 26
- number of new centers receiving State funds for the first time: 1
- number of counties served: 65

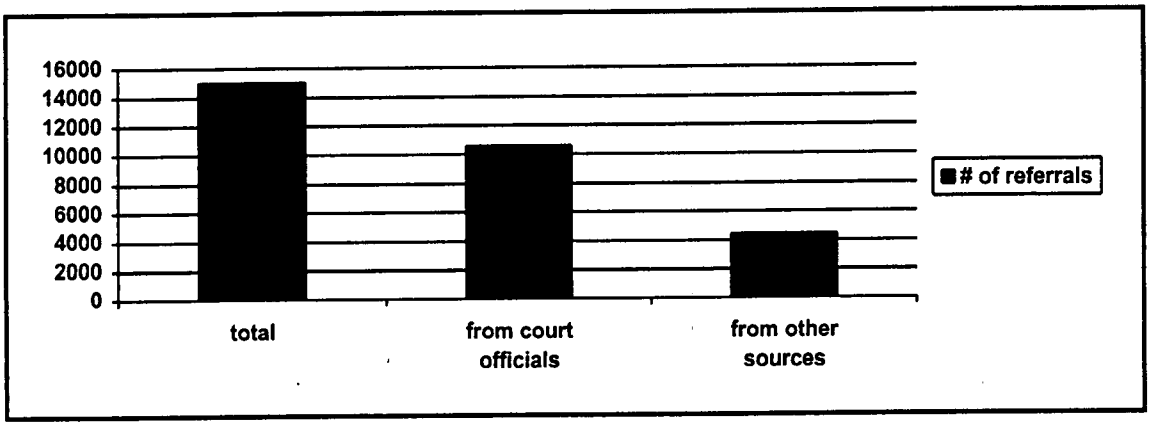
Types of Dispute Settlement Services Provided and Clients Receiving Each Type of Service:

- predominant services provided: mediation and conciliation
- other services provided: group facilitation
  training
  consultation
- total clients served: 42,670
- this information may be represented graphically as follows:



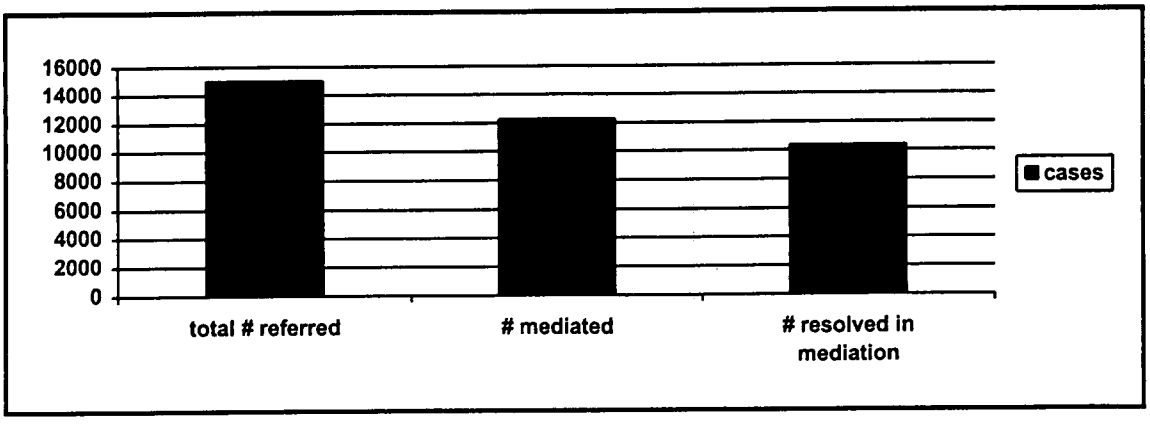
Number and Type of Referrals Received:

- cases referred for mediation or conciliation: 15,030
- referrals from court officials: 10,591 (70%)
- referrals from other sources: 4,439 (30%)
- criminal referrals: 9,870 (65%)
- non-criminal referrals: 5,201 (35%)
- commonly referred criminal casetypes: assault
  communicating threats
  consumer-merchant matters (including worthless checks)
- commonly referred non-criminal casetypes: breach of contract disputes
  domestic relations matters
  school-related problems
- this referral data may be represented graphically as follows:



Cases Actually Mediated or Conciliated, Cases Resolved in Mediation or Conciliation, and Total Clients Served in the Cases Mediated or Conciliated:

- cases referred for mediation or conciliation: 15,030
- cases in which mediation or conciliation was attempted: 12,278 (82%)
- cases resolved via mediation or conciliation: 10,368 (84%)
- persons served in the cases mediated or conciliated: 26,329
- these totals may be represented graphically as follows:



Total Program Funding and Funding Sources:

- total amount of appropriations: $986,660
- range of appropriation amounts: $10,000 (Moore) to $72,000 (Buncombe)
- average appropriation amount: $36,543
- most significant funding source: State appropriation (the State appropriation was one of the top three funding sources for each center)
- other significant funding sources: bank loans
  city and county government
  county school systems
  donations and in-kind contributions
  IOLTA
  non-State contracts and fees for services
  non-State grants
  State grants
  State Teen Court funds
  United Way

Funding Percentage Restrictions (or "Funding Ratios"):

- center that failed to raise the necessary non-State funds: Robeson County

Use of Total Funds:

- primary expenditure: staff salaries (this was the primary expenditure for each of the centers)
- other significant expenditures: contractual services fees
  employee benefits and FICA
  equipment rental and purchases and furniture purchases
  loan payments
  office renovation costs
  rent or mortgage payments
  tax payments
  travel costs
  volunteer development costs

Use of <u>State</u> Funds:

- primary expenditure: staff salaries (this was the primary expenditure of State funds for each of the centers)
- other significant expenditures: CBA youth restitution payments
  contractual services fees
  employee benefits and FICA
  equipment rental and purchases and furniture purchases
  office renovation costs
  rent or mortgage payments
  supplies and materials purchases
  travel costs

Level of Volunteer Activity:

- number of volunteers: 1455
- hours served by these volunteers: 36,070.5
- services provided by volunteers:
  - serving on boards of directors and advisory committees
  - providing mediation and conciliation services
  - providing facilitation, training and consultation services
  - providing court intake and court liaison services
  - providing community outreach and program development services
  - raising funds and engaging in promotional activities
  - providing clerical and other support services
  - providing professional services (e.g., accounting and other financial services)
  - serving as editor of center newsletter
  - providing grounds keeping and maintenance services
  - receiving skills training and attending educational programs
  - providing foreign language interpreting and translating services
  - serving as presenters at informational meetings and instructional sessions

Future Service Demands and Budget Requirements:

- most frequently reported goal: expansion of services provided to families and at-risk youth

Fiscal Year 1997-1998 as Compared to Fiscal Year 1996-1997:

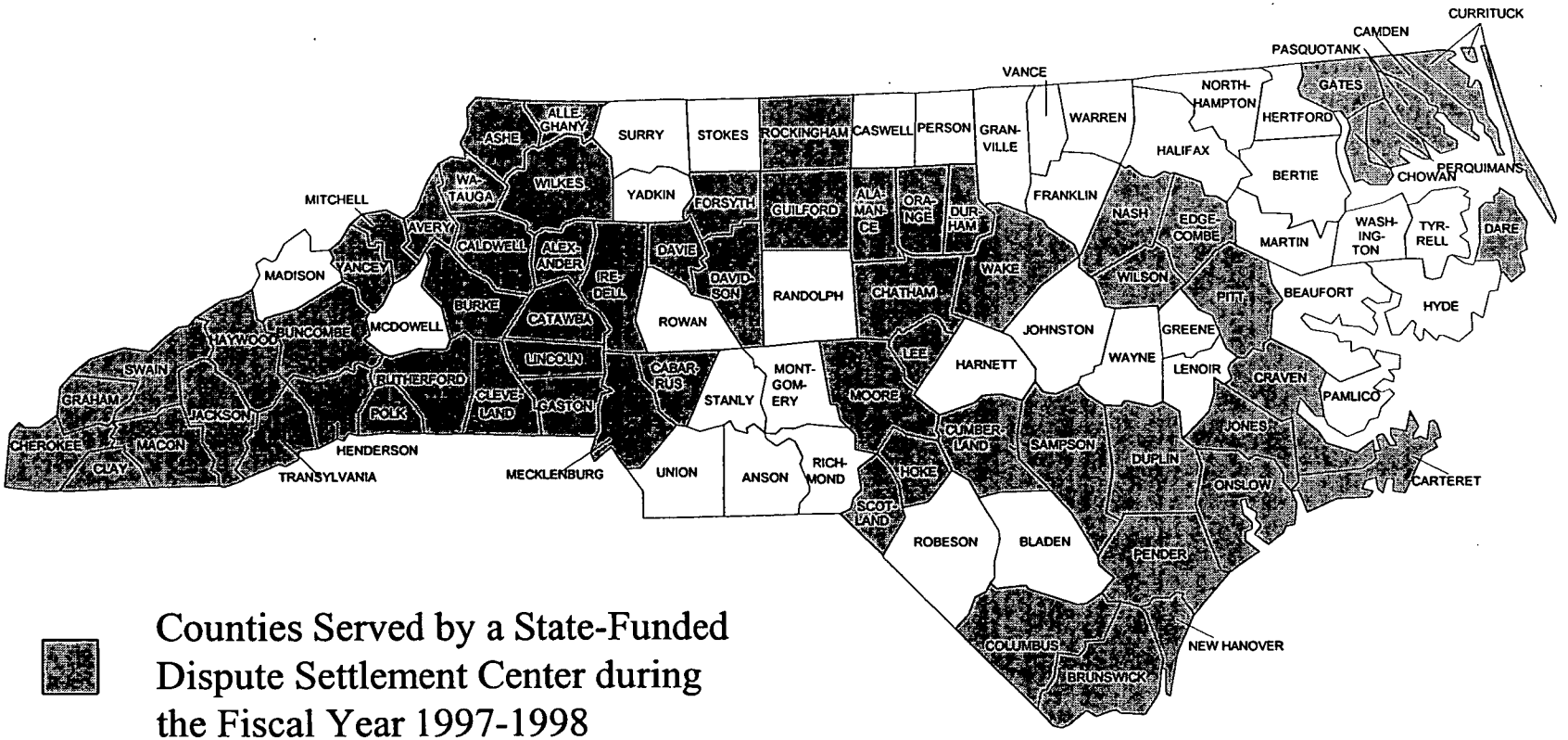
- increases in:
  - number of counties served
  - number of persons served
  - number of centers satisfying the funding ratio requirements
- decreases in:
  - percentage of cases resolved via mediation or conciliation
  - number of volunteers serving the centers
  - number of volunteer hours served
- little or no change in:
  - number of referrals
  - primary funding source (the State appropriation)
  - primary expenditure (employee salaries)

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EXHIBIT 1

Local Dispute Settlement Centers

Fiscal Year 1997-1998



Counties Served by a State-Funded Dispute Settlement Center during the Fiscal Year 1997-1998

ATTACHMENT XII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 924

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

H924-ASA-029

Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Representative Nesbitt

moves to amend the bill on page 2, line 35,
by rewriting the line to read:
"Section 4. G.S. 8-110(b) reads as rewritten:
'(b) No mediator or staff at a community mediation center authorized by G.S. 7A-38.5 shall be compelled to testify or produce evidence concerning statements made and conduct occurring during mediation at the community mediation center in any legal proceeding, except as to communications in furtherance of a crime or fraud. Nothing in this subsection shall be construed to permit a person to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of ~~G.S. 7A-543~~ G.S. 7B-301 or G.S. 108A-102.'
Section 5. Sections 1, 2, and 5 of this act are effective when they become law. Section 3 of this act is effective when it becomes law and expires on June 30, 1999. Section 4 of this act becomes effective July 1, 1999."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 924

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

H924-ASA-032

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Nesbitt

moves to amend the bill on page 2, lines 17-18, by inserting between the lines a new section to read:

"Section 3. G.S. 90-330 reads as rewritten:

'**§ 90-330. Definitions; practice of marriage and family therapy.**

(a) Definitions. -- As used in this Article certain terms are defined as follows:

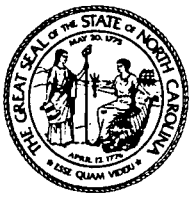
(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. -- Assisting individuals, groups, and families through the counseling relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 924

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

H924-ASA-032

personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. -- Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. -- Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. -- Identifying problems requiring referral to other specialists.

e. Research Activities. -- Designing, conducting, and interpreting research with human subjects.

The 'practice of counseling' does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

(4) A "supervisor" means any licensed professional counselor or, when one is inaccessible, an equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

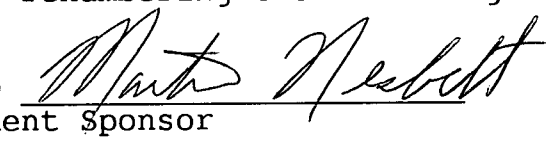
(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. -- No person licensed as a licensed professional counselor under the provisions of this Article shall be allowed to hold himself or herself out to the public as a certified marriage and family therapist, licensed practicing psychologist, psychological associate, or certified clinical social worker unless specifically authorized by other provisions of law. "

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 924

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

H924-ASA-032

and by renumbering the remaining sections accordingly.

SIGNED 
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XIV**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 924 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 2, line, line 35

( ) WHICH CHANGES THE TITLE

by

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

SIGNED Hackney

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XV**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 924 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Nesbitt
Sen.)

moves to amend the bill on page 2, line 31

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"legal proceeding, except as to whether or not the mediation ~~an agreement~~ resulted in an agreement or as to communications in furtherance of a crime or fraud;"

SIGNED Mark Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 924 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.

☐ 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

HOUSE BILL 924*
Proposed Committee Substitute H924-PCS8106-SA

Short Title: Community Mediation Centers. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.5. Community mediation centers.**

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

(c) Each chief district court judge shall encourage mediation for any criminal or civil district court action pending in the district for which the judge determines that mediation is an appropriate alternative."

Section 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the drafting of memoranda of understanding or resolution agreements by mediators at community mediation centers authorized by G.S. 7A-38.5."

Section 3. G.S. 90-330 reads as rewritten:

"**§ 90-330. Definitions; practice of marriage and family therapy.**

(a) Definitions. -- As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling. -- Assisting individuals, groups, and families through the counseling relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

b. Appraisal Activities. -- Administering and interpreting tests for assessment of personal characteristics.

c. Consulting. -- Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities. -- Identifying problems requiring referral to other specialists.

e. Research Activities. -- Designing, conducting, and interpreting research with human subjects.

The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

(4) A "supervisor" means any licensed professional counselor or, when one is inaccessible, an equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. -- No person licensed as a licensed professional counselor under the provisions of this Article shall be allowed to hold himself or herself out to the public as a certified marriage and family therapist, licensed practicing psychologist, psychological associate, or certified clinical social worker unless specifically authorized by other provisions of law."

Section 4. Chapter 8 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Mediation Negotiations.

"**§ 8-110. Inadmissibility of negotiations.**

(a) Evidence of statements made and conduct occurring during a mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(b) No mediator or staff at a community mediation center authorized by G.S. 7A-38.5 shall be compelled to testify or produce evidence concerning statements made and conduct occurring during mediation at the community mediation center in any legal proceeding, except as to whether or not the mediation resulted in an agreement or as to communications in furtherance of a crime or fraud. Nothing in this subsection shall be construed to permit a person to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of G.S. 7B-301 or G.S. 108A-102."

Section 5. This act becomes effective October 1, 1999.

HOUSE JUDICIARY I COMMITTEE

April 20, 1999

Agenda

House Bill 853 - Structured Settlement Protection Act
Representative Hackney

House Bill 884 - Matthew Shepard Memorial Act
Representatives Luebke and Insko

House Bill 1030 - Trailer Amendments
Representative Hackney

House Bill 1048 - Amend Rule 4/Manner of Service
Representative Miller

House Bill 57 – Motor Vehicle Occupant Restraints
Representative Alexander

House Bill 1022 – Unlawful Use of Drivers License
Representative Allen

House Bill 1157 – Increase Small Claims Amount
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 20, 1999
10:00 a.m.
Minutes

The House Judiciary I Committee met on Tuesday, April 20, 1999, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney, and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Insko, Miller, Moore, Nesbitt, and Thompson. The Visitation Registration sheet denotes visitors, (Attachment I).

House Bill 1030, AN ACT TO CHANGE THE LIGHTING REQUIREMENTS FOR LIGHT TRAILERS AND EXEMPT CERTAIN ADDITIONAL FARM TRAILERS FROM THE REGISTRATION REQUIREMENTS, (Attachment II), was the first bill considered by the committee. Representative Hackney stated that he had introduced the bill as the result of a request from a constituent who said that the exclusion for pulling trailers without having to have full light hook-up does not apply to those carrying a bobcat on a trailer. The purpose of the bill is to increase the minimum weight of a trailer required to be equipped with rear lights.

A copy of a summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment III).

Representative Alexander offered an amendment (Attachment IV), and moved its adoption. The amendment would improve grammar in the original statute.

Representative Thompson moved a favorable report for a committee substitute incorporating the amendment, and an unfavorable report for the original bill. The motion carried, (Attachment V). A copy of the committee substitute is attached, (Attachment VI).

Representative Miller was recognized to explain **House Bill 1048, AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY**, (Attachment VII). Representative Miller stated that the bill would require that when a lawsuit is initiated and a summons is issued, notice of the manner of service must be filed with the court within 10 days if it is served by means other than personal delivery. A copy of a summary prepared by Ms. Hayes is attached, (Attachment VIII).

Representative Hackney asked what would happen if one failed to file the manner of service with the court. Representative Miller replied that he would have to check the statutes to answer his question.

Representative Hackney asked if the service would be voided if not filed with the court. Representative Miller replied that it was not his intent to have the service voided, but rather to have a record that service took place.

Representative Miller stated that he would like to have the bill held over until he had an opportunity to respond to Representative Hackney's question regarding the consequences of not complying with the requirement to file the manner of service with the court. The bill was held over.

The Chairman recognized a group of students from Walter M. Williams High School, Burlington, NC, and Western Alamance High School, Elon College, NC, who were visiting the committee.

Representative Luebke was recognized to explain **House Bill 884, AN ACT HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE CRIMINAL PENALTY FOR COMMITTING A HATE CRIME**, (Attachment IX). Representative Luebke stated that the bill would expand the jurisdiction of the North Carolina hate crime statute to include three additional categories; gender, sexual orientation, and disability, as the basis for a "hate crime." The bill would change the penalty for a hate crime from a misdemeanor to a Class I felony. He said that passage of this bill would set a standard for North Carolina and a model for other states encouraging a more civil society.

Representative Insko, co-sponsor of the bill, was recognized. She commented on the inclusion of disabilities as a category as a basis for a hate crime. She noted that a hate crime has two victims: the person to whom the hate crime is directed and the community to which the individual belongs.

Ms. Hayes was recognized to give further explanation of the bill. A bill summary prepared by Ms. Hayes is attached, (Attachment X).

Considerable discussion followed, and Ms. Hayes responded to several questions.

Dr. Janet Joyner, a retired educator from Winston-Salem School of the Arts, and a member of the Board of Directors of SAFE, was recognized. Dr. Joyner spoke in support of the bill. A copy of her remarks is attached, (Attachment XI).

Mr. John Rustin, North Carolina Family Policy Council, was recognized. Mr. Rustin spoke in opposition to the bill. A copy of his remarks is attached, (Attachment XII).

Mr. Johnny Henderson, Christian Action League of North Carolina, spoke in opposition to the bill.

Representative Insko offered an amendment, (Attachment XIII), and moved its adoption. The amendment would solve a double enhancement problem that had been pointed out by Chairman Hackney. The amendment was adopted.

Representative Clary offered an amendment, (Attachment XIV), and moved its adoption. The amendment would add "age" as a category for the basis of the commission of a hate crime. The amendment was adopted.

Representative Ellis questioned whether the committee should have adjourned and reconvened in order to continue past the 11:00 hour. Chairman Hackney stated that the meeting had been set as a two-hour meeting, and ruled that the point of order was overruled.

Representative Nesbitt offered an amendment, (Attachment XV), and moved its adoption. The amendment addressed Representative Nesbitt's concern that the offense must arise out of the offender's generalized hatred of that category of persons. The amendment was adopted.

Representative Luebke called attention to two handouts, (Attachments XVI and XVII) noting that Christians disagree on the point that was raised by the Christian Action League earlier in the meeting. He noted support from the North Carolina Council of Churches and the Episcopal Church.

Mr. Dick Adams, a private citizen, was recognized and spoke in opposition to the bill.

Representative Insko moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment XVIII). Representative Ellis voted against the motion. A copy of the committee substitute is attached, (Attachment XIX).

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 20, 1999 — Date — 10-12 AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NC-NOW
MCCullen	ENCPAC
Janet Joyner	SAFE. Winston-Salem
[illegible]	NC AOC
[illegible]	N.C. Bar
A.A. Adams	Victim Advocate
Hunter Corn	N/A
Debra Ross	ACLU
[illegible]	NCFPC
[illegible]	WCSR
Norma Bowen	NCGA (Rep. Luebke)
Rob Wolfding	Rep. Luebke
Bob Prol	Jordan Price Wall
Tiffany Hoagland	CPCNC
[illegible]	NCDOT
[illegible]	WCSR
Dede Sestrunk	Burlington Kiwanis
Allen Sanders	Burlington Kiwanis
[illegible]	NC Families
Ruth Sappie	NCDOT
Alan Miles	Bailey & Dixon LLP
Kay Michaels	PPOI
[illegible]	AOC
[illegible]	AAA
[illegible]	Governor's Hwy
[illegible]	GHSP
[illegible]	GHSP / Lt. Gov.
David Ferrell	NCCCJC
Tommy MASON	NCCEP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1030

Short Title: Trailer Amendments. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LIGHTING REQUIREMENTS FOR LIGHT TRAILERS AND EXEMPT CERTAIN ADDITIONAL FARM TRAILERS FROM THE REGISTRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129(d) reads as rewritten:

"(d) Rear Lamps. -- Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semitrailer shall carry at the rear, in addition to the originally equipped lamps, a red reflector of the type which has been approved by the Commissioner and which is so located as to height and is so maintained as to be visible for at least 500 feet when opposed by a motor vehicle displaying lawful undimmed lights at night on an unlighted highway.

Notwithstanding the provisions of the first paragraph of this subsection, it shall not be necessary for a trailer weighing less than ~~4,000~~ 6,500 pounds to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors of a diameter of not less than three inches, such reflectors to be approved by the Commissioner, and which are so designed and located as to

height and are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway.

The rear lamps of a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas."

Section 2. G.S. 20-51(6) reads as rewritten:

"**§ 20-51. Exempt from registration.**

The following shall be exempt from the requirement of registration and certificate of title:

...

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by ~~such~~ the farmer or tenant for personal use in implementing ~~husbandry or~~ husbandry, irrigation pipes or loaders, and equipment owned by ~~such~~ the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith."

Section 3. This act becomes effective October 1, 1999.

HOUSE BILL 1030:
Trailer Amendments

BILL ANALYSIS

Committee: House Judiciary I
Date: April 20, 1999
Version: 1st Edition

Introduced by: Rep. Hackney
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: House Bill 1030 changes the lighting requirements for light trailers and exempts certain additional farm trailers from the registration requirements.

BILL ANALYSIS: House Bill 1030 amends G.S. 20-129 to increase the minimum weight of a trailer required to be equipped with rear lamps, instead of reflectors, from 4,000 to 6,500 pounds.

The bill also amends G.S. 20-51 to exempt from motor vehicle registration requirements a trailer drawn by a motor vehicle when the trailer is transporting loaders owned by the farmer.

This bill is effective October 1, 1999.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1030

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

H1030-ASA-033

Page 1 of __

Date _____ ,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Rodney Alexander

moves to amend the bill on page 2, lines 15-16,
by rewriting the lines to read:
"in implementing ~~husbandry or~~ husbandry, irrigation
~~pipes and~~ pipes, loaders, or equipment owned by ~~such~~
the farmer or tenant from"

SIGNED Martha B. Alexander
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1030 A BILL TO BE ENTITLED AN ACT TO CHANGE THE LIGHTING REQUIREMENTS FOR LIGHT TRAILERS AND EXEMPT CERTAIN ADDITIONAL FARM TRAILERS FROM THE REGISTRATION REQUIREMENTS,

☐ 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

HOUSE BILL 1030
Proposed Committee Substitute H1030-PCS3350-LK

Short Title: Trailer Amendments. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LIGHTING REQUIREMENTS FOR LIGHT TRAILERS AND EXEMPT CERTAIN ADDITIONAL FARM TRAILERS FROM THE REGISTRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129(d) reads as rewritten:

"(d) Rear Lamps. -- Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semitrailer shall carry at the rear, in addition to the originally equipped lamps, a red reflector of the type which has been approved by the Commissioner and which is so located as to height and is so maintained as to be visible for at least 500 feet when opposed by a motor vehicle displaying lawful undimmed lights at night on an unlighted highway.

Notwithstanding the provisions of the first paragraph of this subsection, it shall not be necessary for a trailer weighing less than ~~4,000~~ 6,500 pounds to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors of a diameter of not less than three inches, such reflectors to

be approved by the Commissioner, and which are so designed and located as to height and are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway.

The rear lamps of a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas."

Section 2. G.S. 20-51(6) reads as rewritten:

"**§ 20-51. Exempt from registration.**

The following shall be exempt from the requirement of registration and certificate of title:

. . .

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by ~~such~~ the farmer or tenant for personal use in implementing ~~husbandry or~~ husbandry, irrigation ~~pipes and~~ pipes, loaders, or equipment owned by ~~such~~ the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith."

Section 3. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1048

Short Title: Amend Rule 4/Manner of Service. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(l) Process -- Notice of manner of service. -- When service of process is by means other than personal delivery, notice of the manner of service shall be filed with the court within 10 days after the date of service."

Section 2. This act becomes effective October 1, 1999, and applies to actions commenced on or after that date.

HOUSE BILL 1048:
Amend Rule 4/Manner of Service

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Miller
Date:	April 20, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1048 amends G.S. 1A-1, Rule 4 of the Rules of Civil Procedure to require that when service of process is by means other than personal delivery, notice of the manner of service must be filed with the court within 10 days.

This bill is effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 884*

Short Title: Matthew Shepard Memorial Act. (Public)

Sponsors: Representatives Luebke, Insko (Primary Sponsors); Alexander, Easterling, Hackney, Hensley, Miller, Nesbitt, Womble, and Wright.

Referred to: Judiciary I.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE CRIMINAL PENALTY FOR COMMITTING A HATE CRIME.

Whereas, Matthew Shepard was seemingly a victim of a hate crime, his sexual orientation being the apparent reason for his murder; and

Whereas, Matthew Shepard was recently a resident of this State and lived in Raleigh for about a year; and

Whereas, violent crime is abhorrent, and violent criminal acts based on a person's group membership are particularly unacceptable in a civil society; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-3(c) reads as rewritten:

"(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, or country of origin, the offender shall be guilty of a Class I felony. If any felony is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, or country of origin, the offender shall be punished at the sentencing level that is one level higher than that authorized by the offender's prior record level."

Section 2. G.S. 14-401.14 reads as rewritten:

"**§ 14-401.14. Ethnic intimidation; teaching any technique to be used for ethnic intimidation.**

(a) If a person shall, because of race, color, religion, nationality, gender, sexual orientation, disability, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, ~~he~~ the offender shall be guilty of a ~~Class 1 misdemeanor.~~ Class I felony.

(b) A person who assembles with one or more persons to teach any technique or means to be used to commit any act in violation of subsection (a) of this section is guilty of a ~~Class 1 misdemeanor.~~ Class I felony."

Section 3. G.S. 15A-1340.16(d) reads as rewritten:

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

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

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

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

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

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

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

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

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

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
(10) The defendant was armed with or used a deadly weapon at the time of the crime.
(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

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

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

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 884:
Matthew Shepard Memorial Act

BILL ANALYSIS

Committee: House Judiciary I
Date: April 15, 1999
Version: 1st Edition

Introduced by: Luebke and Insko
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 884 expands the scope of the "hate crime" laws and increases the criminal penalty for committing a "hate crime".***

CURRENT LAW: The current classifications that can be the basis for a "hate crime" are: race, color, religion, nationality, or country of origin.

BILL ANALYSIS: House Bill 884 adds 3 new classifications; gender, sexual orientation, and disability, as the basis for a "hate crime". A felony that is committed as a "hate crime" will be punishable at one sentencing level higher than that authorized by the offender's prior record level.

The penalty for ethnic intimidation is raised from a Class 1 misdemeanor to a Class I felony.

House Bill 884 becomes effective December 1, 1999 and applies to acts committed on or after that date.

House of Representatives: Judiciary I, 4/20/1999

My name is Janet Joyner. I am a retired educator from Winston-Salem. Currently, I am a member of the Board of Directors of SAFE in Winston-Salem. SAFE is an association dedicated to assuring safe settings where all children may grow and blossom mentally, physically, and spiritually. In SAFE I work with educators, ministers, and health care professionals who work with youth. I also work with youth, a particular category of teenagers who were largely invisible until the 1990ies. I am a co-facilitator of a weekly support group for lesbian, gay, bisexual, transgendered, or questioning youth. It is from my experience of working with LGBT youth, and substituting in the schools, the unsafe settings in which they must live and move and have their being that my observations and remarks are germane to House Bill 884.

There is a web of connectedness in the constellation of intimidations which this bill addresses: a web of connectedness whose threads are spun early in the human developmental cycle in the form of name-calling by children who only mirror the adults they mimic.

I must tell you that name-calling and slurs occur already in elementary school. And while adults have learned not to tolerate racial slurs, they often fail to intervene with respect to words like lezzie, faggot, gay, queer. (I must also tell you that it is sometimes the adults who use words or gestures that stigmatize in classrooms that are supposed to be safe learning environments for all children.)

Recently, a counselor from one of our middle schools was referred to me for age appropriate materials for dealing with a situation that was, by her own definition, abusive. In a 6th grade class, children had discovered that the mother of one of their classmates is a lesbian and had, in the counselor's words, "gone ballistic." I provided a variety of materials and a documentary video of how 3 different middle schools dealt with this issue. The age appropriate response is to teach that name-calling of any kind is wrong. It hurts feelings; it is motivated by insecurity.

The materials were returned to me without comment. As a follow-up, I called the counselor for feedback regarding their usefulness, or lack thereof. The response was that things had calmed down after the Easter holiday and she and the teacher had decided not to bring the issue up again. Yet failure to deal with the situation did not mean that no lessons were learned: that 6th grade class learned that it is OK to persecute the category of lesbian; the child with the lesbian mother got stigmatized and learned that no adult would intervene for her.

Substituting in the classrooms and halls where the youth I work with have to go to school has opened my eyes to the difficulty and pain of their isolation. It also tells me a great deal about the society I live in, the permission it gives to stigmatize, to weave the web of intimidation, a web which can encourage acting out of phobias in horrible ways. Whoever killed Matthew Shepard and Billie Jack Gaither were children once. As were

the perpetrators of a recent hate crime on Conrad Rd. in Lewisville, a suburb of Winston-Salem. One of the perpetrators was actually a minor.

Eli Vernon, a 17-year-old was taken, stripped, and beaten, because he was perceived to be gay. His perpetrators were caught. At the end of the trial, the judge told Eli that if there had been a hate crime law, he could have given the perpetrators a steeper sentence. Eli is alive. And on March 23rd, Lobby Day, he came here to tell his story and to seek support for this bill.

Some of you may believe that special legislation is not necessary with regard to generalized hate, yet hate crimes are on the rise. Between 1996 and 1997, hate crimes committed due to the victim's sexual orientation rose eight percent according to FBI statistics. Hate crimes based on sexual orientation constitute 1/3 of hate crimes. And the Internet has, among its negative characteristics, made hate cults prosper. We have special legislation of all kinds: special legislation for rape, because it is a special kind of violence. We have special legislation for domestic violence because it is a special kind of violence. The word "special" is a misnomer, and quite possibly, in this instance, a dodge. This is not "special" legislation; this is *needed* legislation.

Some of you may believe that all crime is a hate crime. But I believe these are the kinds of oversimplifications that are dangerously reductive. Is there not a qualitative difference between the crime committed by a Susan Smith who sends her two young sons to death because they inconvenience her relationship with a new boyfriend, and the murder of a Matthew Shepard by individuals who did not even know him? Is there not a qualitative difference between the hatred harbored for a single individual who is known and with whom there is a history of interaction, and the hatred for a generalized category of people? The generalized hatred of a category, as history now repeating itself shows, does give license, in our species, to kill. The law currently takes motivation into account. The very distinctions between first degree murder versus second degree versus manslaughter are laws based on intent. All we are asking is to have intent taken into account in sentencing these types of crimes.

As a lesbian myself, who cherishes, and is cherished by, the community in which I live and worked, I urge you to support this bill, to send a message that attacking someone because of these characteristics is not acceptable. In the demographics of diversity what youngsters need most are adults who have the courage to lead and to model how to be different with honor and integrity. It is the age appropriate response. And I must tell you, finally, that by my remarks and personal revelations here today in this public arena that when I leave this room I will no longer feel or, indeed, be safe. And that fear reverberates throughout my entire family system.

Testimony Before House Judiciary 1 Committee
House Bill 884–Matthew Shepard Memorial Act

by John Rustin, Director of Government Relations
North Carolina Family Policy Council
March 15, 1999

Thank you Mr. Chairman and members of the committee. My name is John Rustin, and I represent the North Carolina Family Policy Council.

Let me first say that the tragic death of Matthew Shepard was a brutal and inexcusable crime. But if that same crime, or any other crime for that matter,were committed against anyone in this room, should that individual not be offered equal protection under the law?

Section 19 of Article 1 of our State Constitution guarantees equal protection to all citizens. This section also states that no person shall be subject to discrimination by the State because of race, color, religion, or national origin. NCGS 14-3(c) recognizes these constitutional provisions by providing a higher level of criminal punishment for individuals who commit misdemeanor crimes because of the victim's race, color, religion, nationality, or country of origin.

As a result, GS 14-3 is consistent with our state Constitution.

HB 884, however, proposes to expand these specially protected classes to include "gender, sexual orientation and disability". In adding these new classes and increasing the crimes encompassed by NCGS 14-3 to include felonies, HB 884 seeks to greatly expand the scope of this statue beyond its current application and beyond the Constitution.

In fact, HB 884 would include in the specially protected class, individuals engaged in the homosexual lifestyle. Under our laws, homosexual activities are considered criminal offenses. HB 884 would provide protection and increased penalties on the basis of an individuals participation in these illegal activities. The reason I bring this up is because House Bill 884 is not about crime or about hate, but about attempting to legitimize the homosexual lifestyle by legally recognizing "sexual orientation" as a protected classification under the law.

In many state's Mr. Shepard's death has been used as a springboard to promote legislation similar to HB 884. The obvious question raised by such legislation is: Should not all the citizens of our state be provided equal protection under the law? If the current criminal penalties under North Carolina law are not sufficient to punish criminal activities against our citizens or if the process of prosecuting these crimes lacks justice, then other changes to the criminal justice system need to be considered.

For these reasons, we oppose HB 884 and request that you do the same.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XIII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 884 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Insko
Sen.)

moves to amend the bill on page 3, line 24

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"county of ~~origination~~ arising the defendant was not charged with an offense under G.S. 14-401.14 and the defendant's punishment has not already been enhanced by G.S. 14-3(c)."

SIGNED Verla Insko

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XIV**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 884 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Clary
Sen.)

moves to amend the bill on page 1, line 5 15, 18, 20

( ) WHICH CHANGES THE TITLE Pg. 2 lines 4, Pg. 3, line 23

by inserting "age," after disability,

SIGNED S Clary

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XV**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 884 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
Sen.)

moves to amend the bill on page 1, line 16, 18, 21

( ) WHICH CHANGES THE TITLE

by inserting after "origin," the following:

"and the offense arises out of the offender's generalized hatred of that category of persons,"

"~~Each offense~~ pg. 2, line 5 arises out

"and the action ~~occurs because~~ of the offender's generalized hatred of that category of persons,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT XVI

NORTH CAROLINA COUNCIL OF CHURCHES

Methodist Building • 1307 Glenwood Avenue - Suite 162
Raleigh, North Carolina 27605-3258 • Telephone (919) 828-6501 and 828-6542
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Moravian Church in America

Presbyterian Church (U.S.A.)

Religious Society of Friends

Roman Catholic Church

[illegible]nited Church of Christ

[illegible]nited Methodist Church

Universal Fellowship of Metropolitan Community Churches

Six Baptist Congregations

Reformed Church of America

April 16, 1999

Representative Verla Insko
Representative Paul Luebke
North Carolina House of Representatives
Raleigh, North Carolina

Dear Verla and Paul:

I regret that I will not be able to attend the House Judiciary I Committee meeting on Tuesday. Our House of Delegates is having its semi-annual meeting, and I will have to be there. Let me put in writing what I wanted to say about House Bill 884.

Members of the denominations that make up the North Carolina Council of Churches have seen and experienced discrimination based on race, religion, and nationality. We understand the importance of hate crime laws. But we have also seen and experienced discrimination based on gender, sexual orientation, and disability. If one accepts the principle that the law should deter crimes that are committed because of the victim's race, religion, nationality, etc. (and we do accept that premise), it's hard to understand why one wouldn't also want to deter crimes based on the victim's gender, sexual orientation, or disability. Are not these victims equally worthy of protection from crimes of discriminatory hatred?

Similarly, if one wants to deter misdemeanor hate crimes and to punish those who commit them, it's hard to understand why one wouldn't also want to deter felony hate crimes. If anything, are not the more egregious crimes even more important to deter?

I hope that the Judiciary Committee will look with favor on H 884 and give it a favorable report without any amendments which would weaken its impact.

Sincerely,

J. George Reed
Legislative Program Associate

cc: Rep. Joe Hackney, Chair, House Judiciary I Committee

Web, world honor Holocaust victims

While people from Israel to Macedonia take time to recall the 6 million Jews killed by the Nazis, an online site is available to help record their names.

FROM WIRE REPORTS

JERUSALEM — Two elderly survivors of the Auschwitz death camp hunched over a pile of forms they struggled to fill out, one for each relative killed in the Holocaust.

"Brothers, sisters, aunts, uncles and cousins — I remember them all," said Jack Glicksman, 76, a retired tailor from New York City, sitting at a table at Yad Vashem, Israel's Holocaust memorial.

As a two-minute siren sounded across the nation, traffic ground to a halt today and Israelis stood in silence in schools and offices to remember the 6 million Jews killed in the Holocaust.

More than 100 refugees from Kosovo stood at attention after their hosts explained the meaning of the siren, one of the central events of Holocaust Remembrance Day. The refugees, who arrived Monday, are being housed in a nature retreat on the Mediterranean.

In Stenkovec, Macedonia, near the Kosovo border, relief workers at an Israeli army field hospital held an impromptu ceremony to remember a tragedy that for many resonated with events unfolding in Kosovo.

Throughout Israel, cars pulled to the side of the road, pedestrians paused on crosswalks, and radio and TV broadcasts stopped until the wail of the siren faded.

Glicksman and his wife, Rose, 76, along with thousands of others, had responded to a plea by Yad Vashem to collect the names of the victims before it was too late.

At the dimly lit Hall of Names in the Yad Vashem complex, a long line of people clamored for the forms, called Pages of Testimony. The document asks for basic information about Holocaust victims, such as their hometowns, ages and places of death.

More than 3 million forms are already stored on the shelves of the Hall of Names, and Yad Vashem has been entering them into a computerized data base.

The Pages of Testimony are often the only death certificates of victims, since the Nazis did not record the names of those they killed. Lacking a grave site, relatives often come to the hall and chant a prayer for the dead near the stacks of black binders containing the pages of names.

Six days ago, Yad Vashem began a drive to collect the names of the nearly 3 million Holocaust victims that have not yet been recorded. It set up a telephone center that has been flooded with inquiries for forms, receiving about 650 an hour Tuesday.

A World Wide Web site — http://www.yad-vashem.org.il/ — gives instructions on how to download the forms and fill them out. Blank forms were also distributed through Israeli newspapers over the weekend.

Glicksman's painful memories were brought back Tuesday as the Brooklyn resident helped his wife fill out forms for her four siblings and parents who perished in the gas chambers of Auschwitz in Nazi-occupied Poland. Glicksman, the only member of his large family to survive World War II, recalled dancing in the snow at Auschwitz to keep his bare feet warm.



Israeli motorists take part in a two-minute remembrance for the 6 million Jews who were killed during the Holocaust.

THE ASSOCIATED PRESS

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 884 A BILL TO BE ENTITLED AN ACT TO HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE CRIMINAL PENALTY FOR COMMITTING A HATE CRIME.

☐ 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

HOUSE BILL 884*
Proposed Committee Substitute H884-PCS2298-SA

Short Title: Matthew Shepard Memorial Act. (Public)

Sponsors:

Referred to: .

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE CRIMINAL PENALTY FOR COMMITTING A HATE CRIME.

Whereas, Matthew Shepard was seemingly a victim of a hate crime, his sexual orientation being the apparent reason for his murder; and

Whereas, Matthew Shepard was recently a resident of this State and lived in Raleigh for about a year; and

Whereas, violent crime is abhorrent, and violent criminal acts based on a person's group membership are particularly unacceptable in a civil society; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-3(c) reads as rewritten:

"(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin, and the offense arises out of the offender's generalized hatred of that category of persons, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin, and the offense arises out of the offender's generalized hatred of that category of persons, the offender shall be guilty of a Class I felony. If any felony is committed because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin, and the offense arises out of the offender's

generalized hatred of that category of persons, the offender shall be punished at the sentencing level that is one level higher than that authorized by the offender's prior record level."

Section 2. G.S. 14-401.14 reads as rewritten:

"**§ 14-401.14. Ethnic intimidation; teaching any technique to be used for ethnic intimidation.**

(a) If a person shall, because of race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, and the action arises out of the offender's generalized hatred of that category of persons, ~~he~~ the offender shall be guilty of a ~~Class 1 misdemeanor.~~ Class I felony.

(b) A person who assembles with one or more persons to teach any technique or means to be used to commit any act in violation of subsection (a) of this section is guilty of a ~~Class 1 misdemeanor.~~ Class I felony."

Section 3. G.S. 15A-1340.16(d) reads as rewritten:

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

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

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

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

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

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

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

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that

person's official duties or because of the exercise of that person's official duties.

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

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

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

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

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

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

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

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

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

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

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, gender, sexual orientation, disability, age, or country of ~~origin.~~ origin, the defendant was not charged with an offense under G.S. 14-401.14, and the defendant's punishment has not already been enhanced by G.S. 14-3(c).

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

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

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

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

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

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

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE JUDICIARY I COMMITTEE
April 20, 1999
6:30 p.m.
Minutes

The House Judiciary I Committee met on Tuesday, April 20, 1999, at 6:30 p. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney, and the following members were present: Representatives Blue, Clary, Ellis, Miller, Nesbitt, and Redwine. The Visitation Registration Sheet denotes visitors, (Attachment I).

Under consideration by the committee was **House Bill 1135, AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE**, (Attachment II). Representative Hackney stated that to accommodate persons outside of the committee who were present regarding the Ignition Interlock portion of the bill, the discussion would begin with Part II on page 12.

A summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment III).

Representative Hackney recognized Mr. Eugene Cella, Assistant Commissioner, Division Motor Vehicles (DMV), and asked that he and representatives from DMV comment on the bill.

Ms. Debby Register, Manager, Driver Assistance Branch, Driver License Section, DMV, commented on the ignition interlock program and how it is applied at DMV.

Ms. Cathy Matthews, Chief Hearing Officer, Driver License Section, DMV, was recognized to comment on the monitoring system of the ignition interlock program.

Mr. Jerry Mobley, Monitech, Inc., was recognized to give a brief presentation regarding the interlock system. He stated that the interlock system is an alcohol breath analyzer that is attached to the ignition system of a vehicle. He commented on ways that persons attempt to defeat the interlock system and what has been done to counteract such measures.

Representative Hackney noted that the bill requires the ignition interlock system for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of a second DWI offense within 7 years.

Representative Hackney asked how many people would be included, what the cost would be, and if Mr. Mobley's firm could handle the volume.

Mr. Mobley replied that the cost is $50 monthly, with a $70 installation fee. He stated that the number of persons is yet to be determined. He said that 0.16 is a large factor in the first offender arrest rate, and that screening is being conducted to determine how many would people would be included. He stated that he felt he could handle the volume, and that he holds the only contract with the state until October of 2000. He noted that he felt other contractors would be readily available if the need should arise.

Mr. Mobley stated that a person who is participating in the ignition interlock program may operate a business car without such system if the employer is willing to accept the responsibility for drive time between 8 and 5 and is willing to sign a document with DMV attesting to that. The hours and geographical area are tightly restricted under this provision.

Representative Hackney called the committee's attention to the open container section of the bill on page 16, and noted that he felt that this was the best definition, or exception, that has been developed and comes from federal law. He reminded the committee that the state is now under a federal mandate to comply, or it will lose several million dollars of highway money.

Representative Hackney called attention to Part I of the bill, Lower Tolerance for Repeat Offenders. He noted that the bill is intended to attempt to get to repeat offenders more than others. He reviewed the restrictions that are outlined in the summary for that section and the remaining sections of the bill. He asked Ms. Hayes to comment on Part VI, Increase Punishment of 19 and 20 Year Old Purchase or Possession of Alcoholic Beverages. Ms. Hayes stated that this section removes what some refer to as the "loop-hole" for possession of alcoholic beverages by 19 and 20 year olds. She said that under current law, it is against the law for anyone under 21 to possess an alcoholic beverage. She said if one is under the age of 19, possession is a Class I misdemeanor, but if one is 19 or 20, it is only an infraction punishable by a fine of $25. This new provision would make all people under the age of 21 subject to the misdemeanor. Ms Hayes noted that Ms. Ann Fulton, Alcohol Beverage Control Commission had contacted her to indicate that the Commission supports this change, but that Ms. Fulton was unable to attend the meeting.

Ms. Hayes was again recognized to comment on Sections 14 and 15 of Part VII of the bill regarding forfeiture of motor vehicles. She state that the DWI forfeiture laws adopted the past two years currently apply only to persons who are driving while license is revoked and are charged with a DWI, with their prior offense having to have been in North Carolina. The new language would make this applicable to persons whose licenses are revoked or have prior DWI's in other states and have not necessarily had their license revoked in NC. If caught for a DWI in NC, and it is their second DWI by virtue of the fact of having a prior offense in another state, the forfeiture laws would apply.

Representative Hackney stated that he had inquired about the fiscal impact of the bill and was told that the fiscal note is being prepared. He said that it is anticipated that some hearing officers would be necessary because of the lower tolerance for repeat offenders and ignition interlock sections of the bill. He said that it was his intention to amend the bill to make those sections effective July 1, 2000.

Representative Ellis requested that Ms. Hayes draft an amendment requiring an "innocent owner" to file a report stating that a defendant drove a vehicle without the owner's expressed or implied permission.

Representative Nesbitt requested information regarding the Alco-Sensor roadside test.

Mr. Mobley stated that the Alco-Sensor is a hand-held device that is being used throughout the country and has a good reputation as being reliable. He noted that his experience with the device was limited.

Representative Nesbitt requested that the committee hear from someone who could attest to the reliability of the Alco-Sensor.

No action was taken on the bill and the meeting was adjourned at 7:30 p.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 20, 1999 (afteroon) — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cheryl S. Chad	Governors Council on Alcohol
Cathy Matthews	DMV, 1100 New Bern Ave
[illegible]	DMV, 1100 New Bern Ave.
[illegible]	DMV
[illegible]	[illegible]
Susan Valeuns	Nationwide
[illegible]	MoniTech, Inc.
D. Jean Reynolds	N/A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 1135

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors: Representatives Hackney, Bowie, Wainwright (Primary Sponsors); and Barefoot.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least

30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the~~

~~charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection. The affidavit(s) under this subsection is not required if the Division is notified of the information specified in this subsection through approved electronic means.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed ~~affidavit required by subsection (c),~~ affidavit(s) or information transmitted by electronic means as required in subsection (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of

the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that

revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the

superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a

vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing before Division: Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5,

if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the Superior Court of the county in which the hearing took place for discretionary review on the record of the revocation. The Superior Court may stay the imposition of the revocation only if the Court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection(c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the

person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with

subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this

subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one

approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a).

PART IV. HGN TEST ADMISSIBILITY

Section 9. Chapter 8 of the General Statutes is amended by adding a new section which reads:

"**§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.**

(a) The results of the Horizontal Gaze Nystagmus (HGN) test are admissible as evidence of a person's impairment by an impairing substance in any criminal, civil, or administrative proceeding and for the purpose of corroborating the opinion of a person as to another's mental or physical impairment from an impairing substance.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a HGN test are not admissible in any proceeding unless it is found that the person administering the HGN test (i) had received training in administering the HGN test prior to conducting the HGN test for which admission of the test results is sought and (ii) had followed the training in administering the HGN test for which admission of the test results is sought.

(c) Nothing contained herein shall prohibit a court from admitting the HGN test into evidence for any purpose when a proper foundation has been established in accordance with the rules of evidence."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health

Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) is repealed.

Section 12. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 13. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 14. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this state would result in a revocation listed in subdivisions (1) or (2)."

Section 15. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A

lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 16. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section

is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 17. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 18. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction <u>which prohibits</u> substantially ~~equivalent to~~ <u>similar conduct prohibited by</u> the offenses in ~~subparagraphs a through c.~~ <u>this subsection.</u>

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 19. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6).

Section 20. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2).

Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 22. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1135:
1999 Governor's DWI Amendments

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney, Bowie & Wainwright
Date:	April 20, 1999		
Version:	1st Edition	**Summary by:**	Susan L. Hayes Committee Counsel

SUMMARY: House Bill 1135 enacts the recommendations of the Governor's DWI Task Force.

BILL ANALYSIS:

Part I. Lower Tolerance for Repeat Offenders

An administrative graduated alcohol concentration scale is created for DWI offenders. When a person convicted of DWI has their license restored DMV must place a restriction that they not operate a motor vehicle with an alcohol concentration of :

0.04 or more if -- It is the first restoration of a license after conviction of a DWI

greater than 0.00 if - 1) It is the second or subsequent restoration of a license after conviction of a DWI, or
2) It is the restoration of a license for a person convicted of DWI in a commercial vehicle, driving while less than 21 after consuming alcohol or drugs, or felony death by vehicle, manslaughter, or negligent homicide when the offense involved impaired driving, or a revocation based on a restriction under this section

The restriction is to remain on the person's license for the following period of time:

-- 7 years if the revocation was a permanent revocation
-- until the person's 21st birthday if the revocation was for driving while less than 21 after consuming alcohol or drugs
--3 years, in all other cases

In order to have their license restored, the person must consent to this restriction, and also must consent to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction.

Violation of the restriction results in a one year administration revocation of the drivers license by DMV.

Part II. Ignition Interlock

An ignition interlock requirement is created for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of another DWI within 7 years of the current offense.

When DMV restores the license of those persons, they must restrict the person to driving only a vehicle equipped with ignition interlock.

The requirement is in effect for:

-- 1 year if the revocation was for 1 year
-- 3 years if the revocation was for 4 years
-- 7 years if the revocation was permanent.

Violation may occur as the result of driving a vehicle without ignition interlock, not personally activating the ignition interlock, or driving a motor vehicle with an alcohol concentration of 0.01 or greater. A person violating these provisions may be charged with Driving While License Revoked by a law enforcement officer, or may have their license administratively revoked by DMV based on an alcohol concentration reading of the ignition interlock.

Part III. Open Container

The open container law is amended to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the driver has not been drinking and the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car.

Part IV. HGN Test Admissibility

A rule of evidence is enacted that authorizes that the horizontal gaze nystagmus test (the "follow my finger with your eyes" test) be admissible in court in instances where the officer was properly qualified to administer the test.

Part V. Limited Driving Privilege Alcosensor Admissibility

Allows the results of an Alco-Sensor (the roadside test) to be admissible in cases dealing with the violation of a limited driving privilege as proof of the presence of alcohol.

Part VI. Increase Punishment for 19 or 20 Year Old Purchase or Possession of Alcoholic Beverages

Repeals the portion of the statute that makes possession of beer or unfortified wine by a 19 or 20 year old an infraction so that possession by any person under 21 will be a Class 1 misdemeanor.

Part VII. Other DWI Changes

Section 13 changes the pre-arrest test rights to conform with the changes made to pre-trial revocation in the 1998 session.

Sections 14 and 15 amend the DWI forfeiture provisions to make them apply to persons who have an out of state DWI conviction.

Section 16 is a technical conforming change.

Section 17 amends the language regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Section 18 amends the language in the definitions section of Chapter 20 regarding out of state convictions to make the language consistent with other parts of the statute, and to add habitual driving and DWI in a commercial vehicle to the offenses included in out of state offenses.

Sections 19 and 20 amend the Operating a commercial vehicle after consuming alcohol, and the Operating a school bus, school activity bus, or child care vehicle after consuming alcohol statutes to provide that if the driver refuses to submit to an Intoxilyzer test, an alcohol screening test can be admitted to prove the presence of alcohol.

Section 21 makes a technical grammatical correction to a section of the DWI forfeiture statutes.

This bill is effective December 1, 1999 and applies to offenses committed on or after that date.

HOUSE JUDICIARY I COMMITTEE

April 21, 1999

Agenda

House Bill 956 – Permanent Revocation Hearing
Representative Creech

House Bill 1048 – Amend Rule 4/Manner of Service
Representative Miller

House Bill 1070 – Marriage License Change
Representative Alexander

House Bill 1133 – Health Ins./Liability
Representative Hackney

House Bill 1135 – 1999 Governor's DWI Amendments
Representative Hackney

House Bill 1157 – Increase Small Claims Amount
Representative Nesbitt

House Bill 1169 – Succession Technical Amendments
Representative Thompson

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 21, 1999
12:00 Noon
Minutes

The House Judiciary I Committee met on Wednesday, April 21 1999 at 12:00 Noon in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Insko, Moore, Nesbitt, and Thompson. The Visitation Registration Sheet denotes visitors, (Attachment I).

Representative Hackney noted that explanation of **House Bill 1135, AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE**, (Attachment II), had taken place at the previous meeting, and that there would be another explanation at this meeting for those who were unable to attend. He then reviewed the provisions of the bill.

A brochure regarding the Ignition Interlock System was distributed to the members, (Attachment III).

Representative Clary offered an amendment, (Attachment IV), and moved its adoption. The amendment would make Parts I and II of the bill effective July 1, 2000 to allow DMV to prepare for implementation of these sections. The amendment was adopted.

Representative Ellis offered and amendment, (Attachment V), and moved its adoption. The amendment would require that an "innocent" owner of a vehicle file a police report stating unauthorized use of the vehicle by a person charged with a DWI violation. The amendment was adopted.

Representative Thompson asked for clarification of the current federal mandate regarding open containers.

Ms. Hayes replied that the federal mandate, which is not yet effective, is that open containers be prohibited in vehicles. Representative Hackney noted that the state would lose about $5 million in highway funds if it did not comply.

Representative Hackney recognized Representative Bowie, a co-sponsor of the bill, for comment.

Representative Nesbitt offered an amendment, (Attachment VI), and moved its adoption. The amendment would remove Part VI from the bill. This section addresses the punishment for 19 or 20 year old purchase or possession of alcoholic beverages.

Representative Clary spoke in opposition to the amendment.

Ms. Ann Fulton, General Counsel, Alcoholic Beverage Commission, spoke in opposition to the amendment.

Mr. Mark Ezzell, Director of Public Affairs, Governor's Institute for Alcohol and Substance Abuse, spoke in opposition to the amendment.

Representative Ellis spoke in support of the amendment.

Considerable discussion followed. The question of adoption of the amendment was before the committee. The amendment was defeated.

Representative Ellis offered an amendment, (Attachment VII), and moved its adoption. The amendment would raise the fine for purchase or possession of alcoholic beverages by 19 or 20 year olds to $200, but leave the violation an infraction. Upon vote of the committee, the amendment was defeated.

Representative Gardner offered an amendment, (Attachment VIII), and moved its adoption. The amendment would make the purchase and possession of alcoholic beverages by 19 and 20 year olds a Class 3 misdemeanor instead of an infraction. Upon voice vote of the committee, the Chairman was unable to determine the vote. By a show of hands, the amendment was adopted.

Representative Moore requested that an amendment be prepared for the floor to allow that the misdemeanor can be expunged for 18, 19 and 20 year olds, if no additional DWI charges are brought within a set time period.

Mr. Ike Avery, Attorney General's Office, was recognized to comment on the Alco-Sensor test.

A motion was made by Representatives Alexander and Ellis to roll the amendments into a committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment IX). A copy of the committee substitute is attached, (Attachment X).

Representative Creech was recognized to explain **House Bill 956, AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO PROVISIONALLY RESTORE THE DRIVERS LICENSE OF A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING AFTER FIVE YEARS**, (Attachment XI). He said that the bill would allow the Division to conduct a hearing after revocation of a license for five years upon meeting various conditions that are outlined in the bill.

Ms. Hayes was recognized to comment on the bill. She stated that currently under DWI statutes, most permanent revocations are not truly permanent. She said that a person may apply to DMV for restoration after three years. If it is determined that the person has not been convicted of any other offenses and is not a user of alcohol or drugs, restoration may occur. She said that the habitual DWI is the only permanent revocation that is truly permanent. This conviction occurs after four DWI convictions in a seven year period. At that point there is a mandatory permanent revocation with no provision for the person to ever get their license back. She said that this bill would allow that person to apply for restoration of license after it has been revoked for five years upon meeting the outlined requirements. A copy of a bill summary, prepared by Ms. Hayes, is attached, (Attachment XII).

Mr. Gene Cella, Assistant Commissioner, DMV, was recognized to comment on the bill. He stated that 2,141 individuals who are deemed to be habitual DWI offenders would be eligible for a hearing if this bill passes.

Following committee discussion, Representative Insko moved for a favorable report. Upon vote of the committee, the bill was given a favorable report, (Attachment XIII).

Representative Thompson was recognized to explain **House Bill 1169, AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE GUBERNATORIAL SUCCESSION ACT SO IT IS CLEAR THAT THE PRESIDENT PROTEMPORE OF THE SENATE CAN BECOME ACTING GOVERNOR IN THE ABSENCE OR DISABILITY OF THE GOVERNOR AND LIEUTENANT GOVERNOR, AND TO ALTERNATE BY YEAR BETWEEN THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PRESIDENT PROTEMPORE OF THE SENATE THE NEXT RANK BELOW THE LIEUTENANT GOVERNOR THE RIGHT TO BECOME ACTING GOVERNOR.** (Attachment XIV). Representative Thompson noted that the bill did not affect the succession of the Governor or Lieutenant Governor, and was not a constitutional issue. He said that current law states that when the Governor and Lieutenant Governor are out of the state, the President of the Senate will serve as acting Governor. He noted that the Lieutenant Governor is the President of the Senate, therefore if he is away, the next in line is the Speaker of the House.

Mr. Gerry Cohen, Director, Bill Drafting Division, was recognized for further explanation. He stated that some conflict had arisen in the past when the President Pro Tempore of the Senate claimed that in the absence of the Lieutenant Governor, he was the President of the Senate. Mr. Cohen noted that this is not what the constitution says, but rather that the President Pro Tempore becomes President of the Senate if the Lieutenant Governor dies, not simply when he is out of the state.

Representative Thompson said that the bill would place the President Pro Tempore of the Senate in the line of succession for the acting role of Governor. The bill would also alternate between odd and even years the President Pro Tempore of the Senate and the Speaker of the House of Representatives as acting Governor.

A bill summary is attached to the minutes, (Attachment XV).

Committee discussion followed. Chairman Hackney noted as a possible solution to take both out and have the Secretary of State serve as acting Governor, since that was a statewide elected position.

The bill was temporarily removed.

Representative Hackney was recognized to explain **House Bill 1133, AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE**, (Attachment XVI). He stated that the bill provides that managed care entities have the duty to exercise ordinary care in making health treatment decisions. He said that everyone in the healthcare field has a standard of care and is liable when they are negligent except for health maintenance organizations (HMO). The bill provides for healthcare liability for HMO's. A proposed committee substitute was distributed, (Attachment XVII). Representative Hackney stated that the committee substitute puts the language in Chapter 90 of the statutes rather than in the Insurance statutes of Chapter 58. He moved that it be adopted for the purpose of discussion. The motion carried.

Ms. Hayes noted that the committee substitute contained new language on page 4, subdivision (f) saying that the bill does not create anything new against the physicians. Another addition states that a health insurer or managed care entity cannot enter into an indemnification contract with the physician, provider or hospital. A summary prepared by Ms. Hayes is attached to the minutes, (Attachment XVIII).

Chairman Hackney reminded the committee that the way one generally recovers in tort law in North Carolina is through negligence. He noted that the decisions that HMO's make in

denying care can be outside the standard of care for the treatment that is required and there cannot be recovery.

Comments were heard from several people from outside the committee.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, was recognized and spoke in support of the bill.

Mr. Dave Horne and Mr. Jim Kerr, North Carolina Medical Society, noted that they have some questions regarding the bill, and would like to work with the sponsor in addressing them.

Mr. Harry Kaplan, Kaiser Foundation Health Plan of North Carolina, was recognized and spoke in opposition to the bill.

No action was taken on the bill.

The meeting was adjourned at 2:00 p.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 21, 1999 — Date

12:00

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gerald K. Robbins	Dept of Justice
Elizabeth Harris	N.C. Child Support
Michael E. Bryant	DMV / DOT
Kelly Respess	DMV / DOT
[illegible]	DMV
[illegible] Cramer	NCATL
Matt Osborne	AOC
Jan Drennan	Institute of Govt
Lena Fulton	ABC Commission
Jerry Mabery	Monteach, Inc.
Adam Searing	NCHAC
Laura Hartzell	NC Bar Association
Alicia Gregory	Poyner & Spruill
Joe Eustace	NC Bankers Association
Andy Eller	NC Retail Merchants Assoc.
Alan Miles	Bailey & Dixon LLP
Paul Vinal	DCHS
N. McBride	DCDA
Kathy M. May	NC CWA Council
Dale A. Foster	CTE Service Corporation
Brenda Dougherty	Spirit

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1135

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors: Representatives Hackney, Bowie, Wainwright (Primary Sponsors); and Barefoot.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least

30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the~~

~~charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection. The affidavit(s) under this subsection is not required if the Division is notified of the information specified in this subsection through approved electronic means.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed ~~affidavit required by subsection (c),~~ affidavit(s) or information transmitted by electronic means as required in subsection (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of

the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that

revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the

superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a

vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5,

if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the Superior Court of the county in which the hearing took place for discretionary review on the record of the revocation. The Superior Court may stay the imposition of the revocation only if the Court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection(c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the

person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with

subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this

subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one

approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a).

PART IV. HGN TEST ADMISSIBILITY

Section 9. Chapter 8 of the General Statutes is amended by adding a new section which reads:

"**§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.**

(a) The results of the Horizontal Gaze Nystagmus (HGN) test are admissible as evidence of a person's impairment by an impairing substance in any criminal, civil, or administrative proceeding and for the purpose of corroborating the opinion of a person as to another's mental or physical impairment from an impairing substance.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a HGN test are not admissible in any proceeding unless it is found that the person administering the HGN test (i) had received training in administering the HGN test prior to conducting the HGN test for which admission of the test results is sought and (ii) had followed the training in administering the HGN test for which admission of the test results is sought.

(c) Nothing contained herein shall prohibit a court from admitting the HGN test into evidence for any purpose when a proper foundation has been established in accordance with the rules of evidence."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health

Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) is repealed.

Section 12. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 13. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 14. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this state would result in a revocation listed in subdivisions (1) or (2)."

Section 15. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A

lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 16. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section

is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 17. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 18. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction <u>which prohibits</u> substantially ~~equivalent to~~ <u>similar conduct prohibited by</u> the offenses in ~~subparagraphs a through c.~~ <u>this subsection.</u>

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 19. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6).

Section 20. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2).

Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 22. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1135

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

H1135-ASA-034

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Clary

moves to amend the bill on page 25, lines 22-23, by rewriting the lines to read:

"Section 22. Parts I and II of this act become effective July 1, 2000 and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999 and applies to offenses committed on or after that date."

SIGNED Clary
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1135

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

H1135-ASA-035

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Ellis

moves to amend the bill on page 25, line 7,
by rewriting the line to read:
"expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;"

and on page 25, lines 9-11, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

H. B. No. 1135 DATE _____

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

(Rep.) Sen.) Nesbitt

moves to amend the bill on page 19, line 4-20

by deleting those lines & renumbering the remaining Parts and Sections accordingly

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

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

Rep.) Coleen Ellis
)
Sen.)

moves to amend the bill on page 11, line 6

by

[illegible] two-hundred dollars ($200.00).

[illegible]

and by deleting Section 17 of the bill and renumbering the remaining Sections accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VIII

(Please type or use ballpoint pen) #5 Gardner adopted 4-23

H. B. No. _____ DATE _____

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

(Rep.) Gardner
Sen.)

moves to amend the bill on page 19, line 6

by rewriting the line to read:

" Section 11. G.S. 18B-302(i) reads as rewritten:

(i) Purchase or Possession by 19 or 20-Year Old – A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~a misdemeanor~~ an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs. a Class 3 misdemeanor.

SIGNED Charlotte Gardner

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1135 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

☐ 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

HOUSE BILL 1135
Proposed Committee Substitute H1135-PCS3358-SA

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least

30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the~~

~~charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection. The affidavit(s) under this subsection is not required if the Division is notified of the information specified in this subsection through approved electronic means.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed ~~affidavit required by subsection (c),~~ affidavit(s) or information transmitted by electronic means as required in subsection (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of

the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that

revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the

superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a

vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing before Division: Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5,

if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the Superior Court of the county in which the hearing took place for discretionary review on the record of the revocation. The Superior Court may stay the imposition of the revocation only if the Court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection(c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the

person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with

subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this

subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one

approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a).

PART IV. HGN TEST ADMISSIBILITY

Section 9. Chapter 8 of the General Statutes is amended by adding a new section which reads:

"**§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.**

(a) The results of the Horizontal Gaze Nystagmus (HGN) test are admissible as evidence of a person's impairment by an impairing substance in any criminal, civil, or administrative proceeding and for the purpose of corroborating the opinion of a person as to another's mental or physical impairment from an impairing substance.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a HGN test are not admissible in any proceeding unless it is found that the person administering the HGN test (i) had received training in administering the HGN test prior to conducting the HGN test for which admission of the test results is sought and (ii) had followed the training in administering the HGN test for which admission of the test results is sought.

(c) Nothing contained herein shall prohibit a court from admitting the HGN test into evidence for any purpose when a proper foundation has been established in accordance with the rules of evidence."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health

Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 13. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 14. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this state would result in a revocation listed in subdivisions (1) or (2)."

Section 15. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 16. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for

all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 17. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 18. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through e.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 19. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted

in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6).

Section 20. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars

($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2).

Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 22. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 956*

Short Title: Permanent Revocation Hearing. (Public)

Sponsors: Representative Creech.

Referred to: Judiciary I.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO PROVISIONALLY RESTORE THE DRIVERS LICENSE OF A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING AFTER FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-138.5(d) reads as rewritten:

"(d) A person convicted under this section shall have his license permanently revoked.

The Division may, however, conditionally restore the person's license after it has been revoked for at least five years if he provides the Division, at a hearing, with satisfactory proof of all of the following:

(1) In the five years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.

(2) He is not a user of alcohol or drugs.

(3) He has complied with the requirements of G.S. 20-19(k).

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration."

Section 2. This act becomes effective December 1, 1999.

HOUSE BILL 956:
Permanent Revocation Hearing

BILL ANALYSIS

Committee: House Judiciary I
Date: April 21, 1999
Version: 1st Edition

Introduced by: Rep. Creech
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 956 would allow DMV to restore the drivers license of a person convicted of habitual DWI after 5 years.***

CURRENT LAW: G.S. 20-138.5 provides for a conviction of habitual DWI when a person has been convicted of 4 DWIs within 7 years. The current law requires that the offenders license be revoked permanently. Unlike other "permanent" revocations, which allow the person to apply to have their license restored after 3 years, the permanent revocation under this statute is truly permanent, with no provision for requesting that the license be restored.

BILL ANALYSIS: House Bill 956 would amend G.S. 20-138.5 to allow DMV to conditionally restore the license of a person convicted of habitual DWI after the license has been revoked 5 years. As in other restorations after a "permanent" revocation, the person would have to show that (i) in the 5 years before the application they have not been convicted in NC or any other state of any motor vehicle offense, alcohol offense, drug offense, or other criminal offense involving the consumption of alcohol or drugs; (ii) the person is not a user of alcohol or drugs; and (iii) the person submits proof of financial responsibility. If DMV restores the license they may place reasonable conditions or restrictions on the person's license for any period up to 5 years from the date of restoration.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 956 A BILL TO BE ENTITLED AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO PROVISIONALLY RESTORE THE DRIVERS LICENSE OF A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING AFTER FIVE YEARS.

☒ 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 1169

Short Title: Succession Technical Amendments. (Public)

Sponsors: Representative Thompson.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE GUBERNATORIAL SUCCESSION ACT SO IT IS CLEAR THAT THE PRESIDENT PRO TEMPORE OF THE SENATE CAN BECOME ACTING GOVERNOR IN THE ABSENCE OR DISABILITY OF THE GOVERNOR AND LIEUTENANT GOVERNOR, AND TO ALTERNATE BY YEAR BETWEEN THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PRESIDENT PRO TEMPORE OF THE SENATE THE NEXT RANK BELOW THE LIEUTENANT GOVERNOR THE RIGHT TO BECOME ACTING GOVERNOR.

Whereas, the General Statutes provide that the President of the Senate is to become Acting Governor in the absence or disability of the Governor and Lieutenant Governor; and

Whereas, if there is a Lieutenant Governor, then the President Pro Tempore does not become President of the Senate under Section 14 of Article II of the Constitution if the Lieutenant Governor is absent or disabled; and

Whereas, it has been unclear who is next in line to be Acting Governor in the absence or disability of the Governor and Lieutenant Governor; and

Whereas, it is desirable that the President Pro Tempore be in line to be Acting Governor, but it is important that there be parity between the two houses in applying the line of succession as Acting Governor, and this would best be served by alternating years between who is next in line; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-11.1(c) reads as rewritten:

"(c) Acting Governor Generally. --

(1) If, by reason of absence from the State or physical or mental incapacity, in odd-numbered years there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

~~(2)~~ If, at the time when under ~~subdivision (1) of this subsection~~ this subdivision, the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(2) If, by reason of absence from the State or physical or mental incapacity, in even-numbered years there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the Speaker of the House of Representatives shall become Acting Governor. If, at the time when under this subdivision, the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives or the Speaker of the House of Representatives fails to qualify as Acting Governor, then the President of the Senate shall become Acting Governor.

(3) If, at the time when under ~~subdivision (2)~~ subdivision (1) or (2) of this subsection either the President of the Senate or the Speaker of the House of Representatives is to become Acting Governor, and there is ~~no~~ neither a President of the Senate nor a Speaker of the House of Representatives, or ~~the Speaker of the House of Representatives fails~~ both of them fail to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(4) Whenever the President of the Senate is mentioned in subdivisions (1) through (3) of this subsection, and there is no President of the Senate other than the Lieutenant Governor, then those subdivisions shall be applied by substituting 'President Pro Tempore' for 'President'."

Section 2. G.S. 147-11.1(d) reads as rewritten:

"(d) Governor Serving under Subsection (c). -- An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If ~~his~~ the officer's tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant Governor from the State, then ~~he~~ that officer shall act only until the Governor or Lieutenant Governor returns to the State; ~~and~~

(2) If ~~his~~ that officer's tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant Governor, then ~~he~~ that officer shall act only until the removal of the incapacity of the Governor or Lieutenant ~~Governor.~~ Governor; and

(3) If the officer's tenure as Acting Governor is founded in part on whether it is an even- or odd-numbered calendar year, then that officer shall act no longer than the end of that calendar year."

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

HOUSE BILL 1169:
Succession Technical Amendments

BILL ANALYSIS

Committee: House Judiciary I
Date: April 21, 1999
Version: 1st Edition

Introduced by: Rep. Thompson
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 1169 makes clarifications and changes to the order of succession to the Office of Governor when both the Governor and Lt. Governor are absent or disabled.***

CURRENT LAW: Current law provides that the President of the Senate acts as Governor when both the Governor and Lt. Governor are absent from the State or disabled. The Lt. Governor is the President of the Senate, and it is not clear under current law whether the term would extend to the President Pro Tempore when acting as President because of the Lt. Governor's absence or disability. Also, under current law, the Speaker of the House is next in the line of succession after the President of the Senate.

BILL ANALYSIS: House Bill 1169 amends G.S. 147-11.1(c) to clarify that where the term President of the Senate is used and there is no President other than the Lt. Governor, then the President Pro Tempore shall be considered the President for the purpose of that subsection. Also, the succession to Governor when both the Governor and Lt. Governor are absent or disabled shall alternated each year between the President of the Senate and the Speaker of the House. In odd-numbered years the President of the Senate will be first in line ahead of the Speaker of the House. In even-numbered years the Speaker of the House will be first in line ahead of the President of the Senate.

The bill also amends subsection (d) of the same statute to provide that if the President of the Senate or Speaker of the House are acting as Governor because it is an odd-numbered or even-numbered year, then at the end of that year it will switch to the other person.

This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 1133

Short Title: Health Ins./Liability. (Public)

Sponsors: Representatives Hackney; and Luebke.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by designating G.S. 58-3-1 through G.S. 58-3-215 as "Part 1, General Regulations for Insurance."

Section 2. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Health Care Liability.

"**§ 58-3-300. Definitions.**

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

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Health and Human

Services or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident;
b. Credit;
c. Disability income;
d. Long-term or nursing home care;
e. Medicare supplement;
f. Specified disease;
g. Dental or vision;
h. Coverage issued as a supplement to liability insurance;
i. Workers' compensation;
j. Medical payments under automobile or homeowners;
k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance; and
l. Hospital income or indemnity.

(2) 'Health care provider' means:

a. An individual who is licensed, certified, or otherwise authorized under Chapter 90 of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients, including:
   1. A health maintenance organization;
   2. An outpatient clinic; and
   3. A medical laboratory.

'Health care provider' includes:

1. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services;
2. The officers and directors of a health care facility; and
3. An agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.

(4) 'Health care service' means a health or medical procedure or service rendered by a health care provider that:

a. Provides testing, diagnosis, or treatment of a human disease or dysfunction; or

b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction.

(5) 'Health care treatment decision' means a determination made when health care services are actually provided by an insurer or managed care entity under a health benefit plan that affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(6) 'Insured or enrollee' means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(7) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(8) 'Managed care entity' means an entity that:

a. Delivers, administers, or assumes risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

'Managed care entity' does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer, or (ii) a pharmacy that is issued a permit by the North Carolina State Board of Pharmacy under Chapter 90 of the General Statutes.

(9) 'Ordinary care' means:

a. For an insurer or managed care entity, that degree of care that an insurer or managed care entity of ordinary prudence would use under the same or similar circumstances; or

b. For a person that is an agent or employee of an insurer or managed care entity, that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as the person would use in the same or similar circumstances.

(10) 'Physician' means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

"**§ 58-3-301. Duty to exercise ordinary care; liability for damages for harm.**

(a) Each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each insurer or managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which result in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against an insurer or managed care entity for a health benefit plan that:

(1) Neither the insurer or managed care entity nor an agent or employee for whom the insurer or managed care entity is liable under subsection (b) of this section controlled, influenced, or participated in the health care treatment decision; and

(2) The insurer or other managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled.

(d) An action brought under this Part against an insurer or managed care entity, a finding that a physician or health care provider is an agent or employee of the insurer or managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the insurer's or managed care entity's health benefit plan.

(e) In any action brought under this Part against an insurer or managed care entity, any law that prohibits the corporate practice of medicine may not be used as a defense by the insurer or managed care entity.

(f) Nothing in this Part shall be construed to create an obligation on the part of an insurer or managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

"**§ 58-3-302. No liability under this Part on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a pharmacy.**

This Part does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy under Chapter 90 of the General Statutes.

"**§ 58-3-303. Separate trial required.**

Upon motion of any party in an action brought pursuant to this Part involving an insurer, the court shall order a separate trial of any claim, cross claim, counterclaim, or third party claim against any physician or other health care provider."

Section 3. G.S. 1A-1, Rule 42, reads as rewritten:

"**Rule 42. Consolidation; separate trials.**

(a) Consolidation. -- ~~When~~ Except as provided in subsection (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. --

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action instituted pursuant to Part 2 of Article 3 of Chapter 58 of the General Statutes involving an insurer, as defined in G.S. 58-3-300, the court shall order a separate trial of any claim, cross claim, counterclaim, or third party claim against a physician or other medical provider."

Section 4. This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1133
Proposed Committee Substitute H1133-PCS3352-LN

Short Title: Health Ins./Liability. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

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 1G.

"Health Care Liability.

"**§ 90-21.50. Definitions.**

As used in this Article, unless the context clearly indicates otherwise, the term:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Health and Human

Services or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident;
b. Credit;
c. Disability income;
d. Long-term or nursing home care;
e. Medicare supplement;
f. Specified disease;
g. Dental or vision;
h. Coverage issued as a supplement to liability insurance;
i. Workers' compensation;
j. Medical payments under automobile or homeowners;
k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance; and
l. Hospital income or indemnity.

(2) 'Health care provider' means:

a. An individual who is licensed, certified, or otherwise authorized under this Chapter to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients;

'Health care provider' includes:

1. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services;
2. The officers and directors of a health care facility; and
3. An agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.

(3) 'Health care service' means a health or medical procedure or service rendered by a health care provider that:

a. Provides testing, diagnosis, or treatment of a human disease or dysfunction; or
b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction.

(4) 'Health care treatment decision' means a determination made when health care services are provided, arranged for, paid for, or

reimbursed by an insurer or managed care entity under a health benefit plan that affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(5) 'Insured or enrollee' means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(6) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, or a multiple employer welfare arrangement subject to Article 49 of Chapter 58 of the General Statutes.

(7) 'Managed care entity' means an entity that:

a. Delivers, administers, or undertakes to provide, arrange for, or reimburse for health care services, or assumes the risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

'Managed care entity' does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer, or (ii) a pharmacy that is issued a permit by the North Carolina State Board of Pharmacy under this Chapter.

(8) 'Ordinary care' means:

a. For an insurer or managed care entity, that degree of care that an insurer or managed care entity of ordinary prudence would use under the same or similar circumstances; or

b. For a person that is an agent or employee of an insurer or managed care entity, that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as the person would use in the same or similar circumstances.

(9) 'Physician' means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

"**§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.**

(a) Each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for

damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each insurer or managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which results in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against an insurer or managed care entity for a health benefit plan that:

(1) Neither the insurer or managed care entity nor an agent or employee for whom the insurer or managed care entity is liable under subsection (b) of this section controlled, influenced, or participated in the health care treatment decision; and

(2) The insurer or other managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled.

(d) In an action brought under this Article against an insurer or managed care entity, a finding that a physician or health care provider is an agent or employee of the insurer or managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the insurer's or managed care entity's health benefit plan.

(e) In any action brought under this Article against an insurer or managed care entity, any law that prohibits the corporate practice of medicine may not be used as a defense by the insurer or managed care entity.

(f) Nothing in this Article imposes liability on a physician or health care provider in addition to that otherwise imposed under existing law.

(g) Nothing in this Article shall be construed to create an obligation on the part of an insurer or managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

(h) A health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. Any such indemnification or hold harmless clause is void and unenforceable to the extent of the restriction.

"§ 90-21.52. No liability under this Article on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a pharmacy.

This Article does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy under this Chapter.

"**§ 90-21.53. Separate trial required.**

Upon motion of any party in an action brought pursuant to this Article involving an insurer, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against any physician or other health care provider."

Section 2. G.S. 1A-1, Rule 42, reads as rewritten:

"**Rule 42. Consolidation; separate trials.**

(a) Consolidation. -- ~~When~~ Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. --

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, ~~crossclaim,~~ cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, ~~crossclaims,~~ cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action instituted pursuant to Article 1G of Chapter 90 of the General Statutes involving an insurer, as defined in G.S. 90-21.50, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider."

Section 3. This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

HOUSE BILL 1133: Health Ins./Liability

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 21, 1999	**Summary by:**	Susan L. Hayes
Version:	H1133-PCSLN-001		Committee Counsel

SUMMARY: ***House Bill 1133 provides that an insurer providing a health benefit plan is liable for damages for harm to its insureds or enrollees caused by the insurer's failure to exercise ordinary care.***

BILL ANALYSIS: House Bill 1133 enacts a new G.S 90-21.50 through 90-21.53, providing that each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to do so. The bill also makes the insurer or managed care entity liable for damages for harm proximately caused by health care treatment decisions made by its agents or employees, or its representatives over whom it has the right to exercise influence or control or has actually exercised influence or control that result in the failure to exercise ordinary care.

The insurer or managed care entity has a defense if (1) neither it nor an agent or employee for whom it is liable controlled, influenced or participated in the health care treatment decision and (2) it did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled person. The bill does not impose liability on a physician or health care provider in addition to that otherwise imposed under existing law. Also, a health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. No liability is created on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the NC Board of Pharmacy.

In an action under these provisions involving an insurer, on motion of any party the court must order a separate trial of any claim, cross claim, counterclaim, or third party claim against any physician or other health care provider.

This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 21, 1999 (afteroon) — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Moore & VanAllen
Andy Ellen	NCRMA
Adam Sevier	NCAJAC
Nancy Thompson	NCCPBD
Jamie Fullbright	Hunton & Williams
[illegible] Cromer	NCATL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1157

Short Title: Increase Small Claims Amount. (Public)

Sponsors: Representatives Nesbitt, Redwine; and Baddour.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars ($3,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. This act becomes effective July 1, 1999, and applies to claims filed for causes of action arising on or after that date.

HOUSE BILL 1157:
Increase Small Claims Amount

BILL ANALYSIS

Committee: House Judiciary I
Date: April 20, 1999
Version: 1st Edition

Introduced by: Rep. Nesbitt
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 1157 increases the amount that may be in controversy in small claims court from $3,000 to $5,000. This act becomes effective July 1, 1999 and applies to claims filed for causes of action arising on or after that date.***

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen) Nesbitt #2

EDITION No. _____

H. B. No. 1133 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
Sen.)

moves to amend the bill on page 4, line 30-31

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following new subsection

"(f) An insurer or managed care entity shall not be ~~vicariously~~ liable for the independent actions of a health care provider, who is not an agent or employee of the insurer or managed care entity, when that health care provider fails to exercise the standard of care required by G.S. 90-21.12. ~~A~~ health care provider shall not be ~~held~~ liable for the independent actions of ~~a~~ an insurer or managed care entity when the insurer or managed care entity fails to exercise the standard of care required by this Article."

and by relettering ~~redesignating~~ the remaining subsections accordingly

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1133
Proposed Committee Substitute H1133-PCS3352-LN

Short Title: Health Ins./Liability. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

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 1G.

"Health Care Liability.

"**§ 90-21.50. Definitions.**

As used in this Article, unless the context clearly indicates otherwise, the term:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Health and Human

Services or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident;
b. Credit;
c. Disability income;
d. Long-term or nursing home care;
e. Medicare supplement;
f. Specified disease;
g. Dental or vision;
h. Coverage issued as a supplement to liability insurance;
i. Workers' compensation;
j. Medical payments under automobile or homeowners;
k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance; and
l. Hospital income or indemnity.

(2) 'Health care provider' means:

a. An individual who is licensed, certified, or otherwise authorized under this Chapter to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients;

'Health care provider' includes:

1. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services;
2. The officers and directors of a health care facility; and
3. An agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.

(3) 'Health care service' means a health or medical procedure or service rendered by a health care provider that:

a. Provides testing, diagnosis, or treatment of a human disease or dysfunction; or
b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction.

(4) 'Health care treatment decision' means a determination made when health care services are provided, arranged for, paid for, or

reimbursed by an insurer or managed care entity under a health benefit plan that affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(5) 'Insured or enrollee' means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(6) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, or a multiple employer welfare arrangement subject to Article 49 of Chapter 58 of the General Statutes.

(7) 'Managed care entity' means an entity that:

a. Delivers, administers, or undertakes to provide, arrange for, or reimburse for health care services, or assumes the risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

'Managed care entity' does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer, or (ii) a pharmacy that is issued a permit by the North Carolina State Board of Pharmacy under this Chapter.

(8) 'Ordinary care' means:

a. For an insurer or managed care entity, that degree of care that an insurer or managed care entity of ordinary prudence would use under the same or similar circumstances; or

b. For a person that is an agent or employee of an insurer or managed care entity, that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as the person would use in the same or similar circumstances.

(9) 'Physician' means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

"§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.

(a) Each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for

damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each insurer or managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which results in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against an insurer or managed care entity for a health benefit plan that:

(1) Neither the insurer or managed care entity nor an agent or employee for whom the insurer or managed care entity is liable under subsection (b) of this section controlled, influenced, or participated in the health care treatment decision; and

(2) The insurer or other managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled.

(d) In an action brought under this Article against an insurer or managed care entity, a finding that a physician or health care provider is an agent or employee of the insurer or managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the insurer's or managed care entity's health benefit plan.

(e) In any action brought under this Article against an insurer or managed care entity, any law that prohibits the corporate practice of medicine may not be used as a defense by the insurer or managed care entity.

(f) Nothing in this Article imposes liability on a physician or health care provider in addition to that otherwise imposed under existing law.

(g) Nothing in this Article shall be construed to create an obligation on the part of an insurer or managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

(h) A health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. Any such indemnification or hold harmless clause is void and unenforceable to the extent of the restriction.

"§ 90-21.52. No liability under this Article on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a pharmacy.

This Article does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy under this Chapter.

"**§ 90-21.53. Separate trial required.**

Upon motion of any party in an action brought pursuant to this Article involving an insurer, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against any physician or other health care provider."

Section 2. G.S. 1A-1, Rule 42, reads as rewritten:

"**Rule 42. Consolidation; separate trials.**

(a) Consolidation. -- ~~When~~ Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. --

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, ~~crossclaim,~~ cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, ~~crossclaims,~~ cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action instituted pursuant to Article 1G of Chapter 90 of the General Statutes involving an insurer, as defined in G.S. 90-21.50, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider."

Section 3. This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

ATTACHMENT V

HOUSE BILL 1133: Health Ins./Liability

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 21, 1999	**Summary by:**	Susan L. Hayes
Version:	H1133-PCSLN-001		Committee Counsel

SUMMARY: House Bill 1133 provides that an insurer providing a health benefit plan is liable for damages for harm to its insureds or enrollees caused by the insurer's failure to exercise ordinary care.

BILL ANALYSIS: House Bill 1133 enacts a new G.S 90-21.50 through 90-21.53, providing that each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to do so. The bill also makes the insurer or managed care entity liable for damages for harm proximately caused by health care treatment decisions made by its agents or employees, or its representatives over whom it has the right to exercise influence or control or has actually exercised influence or control that result in the failure to exercise ordinary care.

The insurer or managed care entity has a defense if (1) neither it nor an agent or employee for whom it is liable controlled, influenced or participated in the health care treatment decision and (2) it did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled person. The bill does not impose liability on a physician or health care provider in addition to that otherwise imposed under existing law. Also, a health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. No liability is created on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the NC Board of Pharmacy.

In an action under these provisions involving an insurer, on motion of any party the court must order a separate trial of any claim, cross claim, counterclaim, or third party claim against any physician or other health care provider.

This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen) #1 Merrill adopted

EDITION No. _____

H. B. No. 1133 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Nesbitt

moves to amend the bill on page 2, line 44

( ) WHICH CHANGES THE TITLE

by ~~inserting the word "for"~~

deleting "provided," and inserting "provided for,"

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE JUDICIARY I COMMITTEE

April 21, 1999

Agenda

House Bill 956 – Permanent Revocation Hearing
Representative Creech

House Bill 1048 – Amend Rule 4/Manner of Service
Representative Miller

House Bill 1070 – Marriage License Change
Representative Alexander

House Bill 1133 – Health Ins./Liability
Representative Hackney

House Bill 1135 – 1999 Governor's DWI Amendments
Representative Hackney

House Bill 1157 – Increase Small Claims Amount
Representative Nesbitt

House Bill 1169 – Succession Technical Amendments
Representative Thompson

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 21, 1999
6:30 p.m.
Minutes

The House Judiciary I Committee met on Wednesday, April 21 , 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Clary, Ellis, Gardner, Insko, and Nesbitt, Visitors are denoted by the Visitation Registration Sheet, (Attachment I).

Representative Nesbitt was recognized for explanation of **House Bill 1157, AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT**, (Attachment II). He stated that the bill raises the amount that may be in controversy in small claims court from $3,000 to $5,000. He said that this legislation would help to unclog the courts by getting smaller cases into small claims court. Representative Nesbitt noted that small claims courts are user-friendly. He said that some people do not agree and feel that poorer people are taken advantage of before magistrates and that too much authority would be given to magistrates. He stated that he would like to have an amendment drafted regarding the amount of bond that would be required during an appeal, and requested that committee counsel do so.

Ms. Fran Preston, North Carolina Retail Merchants Association, spoke in support of the bill, and noted support from various additional groups. She added that the Retail Merchants Association would have no opposition to the proposed amendment.

An explanation, prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment III)

The bill was displaced pending the drafting of the amendment.

The proposed committee substitute for **House Bill 1133, AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE**, (Attachment IV) was again before the committee. The bill was explained in the 12:00 noon meeting of the committee. A summary of the bill is attached, (Attachment V).

An amendment was offered by Representative Nesbitt, (Attachment VI), who moved its adoption. The amendment would insert the work "for" after "provided" on page 2, line 44. Upon vote of the committee, the amendment was adopted.

A second amendment was offered by Representative Nesbitt, (Attachment VII), who moved its adoption. The amendment would insert language stating that HMOs are responsible for their own conduct, for the conduct of their agents and employees, but were not to be responsible for the independent decisions of network providers or people with whom they contracted to provide the care. Upon vote of the committee, the amendment was adopted.

A third amendment was offered by Representative Nesbitt, (Attachment VIII), who moved its adoption.

Mr. Jim Kerr, North Carolina Medical Society, was recognized to explain the amendment. Considerable discussion followed. Upon vote of the committee, the amendment was adopted.

The Chairman suggested that a new proposed committee substitute incorporating the adopted amendments be drafted by the committee counsel to be reviewed by the committee at the next meeting. Representative Nesbitt so moved. The motion carried.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT VIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1133

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

H1133-ASA-039

Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1133-PCS3352-LN

Representative_____

moves to amend the bill on page 4, line 9 10,
by rewriting the line to read:
"the right to exercise influence or significant control with respect to the actual care and treatment of the insured or enrollee which results in the failure to exercise"

and on page 4, line 32, by rewriting the line to read:
"in addition to that otherwise imposed under existing law. No insurer or managed care entity held liable under this Article shall be entitled to contribution under Chapter 1B of the General Statutes from a physician or health care provider."

and on page 5, line 7
by deleting "insurer," and inserting "insurer or managed care entity,"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE JUDICIARY I COMMITTEE

April 22, 1999
10:00 AM

Agenda

House Bill 316 - Prescribed Burning in Forests
Representatives McComas and Owens
House Bill 1022 - Unlawful Use of Drivers License
Representative Allen
House Bill 1048 - Amend Rule 4/Manner of Service
Representative Miller
House Bill 1056 - Limitation for Prod. Liability Action
Representative Miller
House Bill 1130 - Limit Y2K Liability
Representative Tolson
House Bill 1131 - Raise State Tort Claims CAP
Representative Walend
House Bill 1133 - Health Ins./Liability
Representative Hackney
House Bill 1157 - Increase Small Claims Amount
Representative Nesbitt
House Bill 1169 - Succession Technical Amendments
Representative Thompson
House Bill 1194 - Need Consent to Tape Conversation
Representative Nesbitt
House Bill 1231 - Safe Storage of Firearms
Representative Kinney
House Bill 1245 - 3rd Degree Sex Offense
Representative Clary
House Bill 1248 - G. S.14-190.9 Const. Conformity
Representative Hackney

HOUSE JUDICIARY I COMMITTEE
April 22, 1999
10:00 a.m.
Minutes

The House Judiciary I Committee met on Thursday, April 22, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Clary, Ellis, Gardner, Gray, Insko, Miller, Moore, Nesbitt, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **House Bill 1056, AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE** was removed from the agenda at the request of the bill sponsor, Representative Miller. The removal of **House Bill 1231, AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS,** was also requested by the sponsor, Representative Kinney. Representative Clary requested that **House Bill 1245, AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE** be removed from the agenda.

Representatives McComas and Owens were recognized for any additional comment on **House Bill 316, AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS,** (Attachment II). The bill was explained and discussed during the April 13, 1999 meeting. A summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment III).

Representative Miller offered an amendment, (Attachment IV), and moved its adoption. The amendment addressed the immunity from liability issue. Mr. Miller briefly explained the amendment. Following brief discussion, the amendment was adopted.

Representative Miller moved that the amendment be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment V). A copy of the committee substitute is attached, (Attachment VI).

The committee returned to **House Bill 1133, AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSUrER'S FAILURE TO EXERCISE ORDINARY CARE.** The bill was explained and discussed, and amendments were adopted during the two meetings on April 21, 1999, (see minutes). A new proposed committee substitute was distributed that incorporated the amendments that were adopted at the previous meeting, (Attachment VII). Representative Hackney briefly explained the new committee substitute.

An amendment to delete the word "provide" and substitute the words "provide for" was offered by Representative Ellis, (Attachment VIII), who moved its adoption. The motion carried, and the amendment was adopted.

Representative Moore offered an amendment to assure that the liable entity does not seek indemnity from the employer, and moved its adoption, (Attachment IX). The motion carried.

Representative Ellis moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment X). A copy of the committee substitute is attached, (Attachment XI).

Representative Allen was recognized to explain **House Bill 1022, AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES,** (Attachment XII). Representative Allen distributed two handouts, (Attachments XIII and XIV). He stated that the number one fraud problem facing financial institutions and law enforcement agencies is the counterfeiting of commercial checks. He said that computer software is readily available to allow one to purchase most any type of identification. Once the identification is obtained in this manner, the fake identification (drivers' license, id cards), can be used to commit fraud by cashing stolen commercial checks. He said that the bill would change the penalty for using a false or fictitious name or address from a misdemeanor to a Class H felony. A copy of a bill summary prepared by Ms. Hayes is attached, (Attachment XV).

Mr. Andy Ellen, North Carolina Retail Merchants Association, was recognized and spoke in support of the bill.

Ms. Hayes commented briefly on the bill. She added that using a false or fictitious name in applying for a drivers' license would also become a felony under this bill.

There was discussion regarding the penalties for violation of other acts in the bill.

Mr. Wayne Hurder, Division of Motor Vehicles, was recognized and spoke in support of the bill.

Mr. Paul Stock, North Carolina Bankers Association, spoke in support of the bill.

Representative Ellis offered an amendment, (Attachment XVI) and moved its adoption. The amendment would change the penalty for subsection (a) of the bill from a Class H felony to a misdemeanor.

Mr. Stock spoke in opposition to the amendment. Following discussion, the amendment was adopted.

Representative Nesbitt offered an amendment, (Attachment XVII) and moved its adoption. The amendment would change the penalty from a Class H to a Class I felony. The amendment was adopted.

Representative Ellis moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment XVIII). A copy of the committee substitute is attached, (Attachment XIX).

Representative Thompson was recognized to continue the discussion of **House Bill 1169, AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE GUBERNATORIAL SUCCESSION ACT SO IT IS CLEAR THAT THE PRESIDENT PROTEMPORE OF THE SENATE CAN BECOME ACTING GOVERNOR IN THE ABSENCE OR DISABILITY OF THE GOVERNOR AND LIEUTENANT GOVERNOR, AND TO ALTERNATE BY YEAR BETWEEN THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PRESIDENT PRO TEMPORE OF THE SENATE THE NEXT RANK BELOW THE LIEUTENANT GOVERNOR THE RIGHT TO**

BECOME ACTING GOVERNOR. The bill was explained and discussed during the 12:00 noon meeting on April 21, 1999. Representative Thompson offered a proposed committee substitute, (Attachment XX). He stated that the committee substituted clarified exactly who would act as governor when the governor and lieutenant governor were out of the state.

Representative Clary moved that the proposed committee substitute be adopted and be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment XXI).

Representative Tolson was recognized to explain **House Bill 1130, AN ACT TO AMEND THE NORTH CAROLINA TORT CLAIMS ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR TORT DAMAGES BASED ON CERTAIN COMPUTER FAILURES, TO PROTECT THE STATE FROM BREACHING CONTRACTS DUE TO CERTAIN COMPUTER FAILURES, AND TO PROTECT STATE AND LOCAL GOVERNMENT EMPLOYEES FROM PERSONAL LIABILITY DUE TO CERTAIN COMPUTER FAILURES**, (Attachment XXII). He commented briefly on the bill.

Ms. Hayes was recognized to make further comment. A copy of the summary of the bill is attached, (Attachment XXIII). Following her comments, there was considerable discussion.

Representative Ellis requested that an amendment be drafted to delete Section I of the bill.

Representative Miller spoke in opposition to the bill.

Representative Clary asked for information regarding what other states had done with regard to the liability issue.

Representative Tolson replied that six states currently have similar laws.

Representative Gardner spoke in support of the bill

Ms. Elizabeth F. Kuniholm, Academy of Trial Lawyers, spoke in opposition to the bill.

Mr. Jim Blackburn, County Commissioners Association, was recognized. He stated that counties would like to receive the same protection that the private sector receives.

Representative Nesbitt spoke in opposition to the bill.

Chairman Hackney suggested that the bill be held for consideration at a future meeting.

Representative Gardner again spoke in support of the bill.

No action was taken on the bill at this time.

Representative Walend was recognized to explain **HOUSE Bill 1131, AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT**, (Attachment XXIV). Representative Walend briefly related the experience of a constituent, which led to the drafting of the legislation. The bill would increase the limit on claims under the State Tort Claims Act from $150,000 to $300,000.

Ms. Hayes' summary is attached, (Attachment XXV).

Considerable discussion followed.

The bill was displaced until various questions could be addressed.

Representative Nesbitt was recognized to continue the discussion of **House Bill 1157, AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT**, (Attachment XXVI). The bill was discussed during the 6:30 p.m. meeting on April 21, 1999. Representative Nesbitt offered an amendment, (Attachment XXVII), and moved its adoption. The amendment would allow that it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears, not to exceed three thousand dollars. The amendment was adopted.

Ms. Ann Winner, North Carolina Justice and Community Development Center, noted that the amendment addressed some of their concerns.

Mr. Andy Ellen, Retail Merchants' Association, spoke in support of the bill.

Representative Ellis moved that the amendment be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment XXVIII). A copy of the committee substitute is attached, (Attachment XXIX).

The meeting was adjourned at 12:00 noon.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 22, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Miles, Jr	Grass Roots North Carolina
Jeff Rau	Grass Roots NC
Rui Ulone	Grass Roots North Carolina
Mike Concannon	Grass Roots North Carolina
Henri McClees	McClees Consulting Inc
Thomas V. Bennett	NCCFTU
[illegible]	NC Council of Churches
[illegible]	South NC
Sakynne Hamlet	Sen. Lee
Donna Braxley	Fountain
Darryl Walden	"
LH Coffey	GNO
Skip Woodson	NC Farm Bureau
Bill Brooks	NCFPC
John [illegible]	NCFPC
Jim Blackburn	Assoc. County Comm'rs.
Bill Rowe	NC Justice Center
Paul Mahoney	NC Assn of Health Plans
[illegible]	AT&T
[illegible]	GTE Service Corporation
Kim Hibbard	NC League of Municipalities
Gary Walker	Alltel
Wayne Hurder	DMV - Driver License
Liz Kamiholm	NCATL
Walter Price	Charlotte Chamber
TWorth	CHS
AJ Bain	NC M

VISITOR REGISTRATION SHEET

J-1 — 4-22-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alice Harland	ElectriCities
Ann Case	NCRMA
Andy Ellen	NCRMA
Michelle Cook	Weyerhaeuser
Susan Smith	CWA
PERRI MORGAN	NFIB

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 316

Short Title: Prescribed Burning in Forests/AB. (Public)

Sponsors: Representatives McComas, Owens (Primary Sponsors); and Culp.

Referred to: Wildlife Resources, if favorable, Judiciary I.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and

animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 113-60.41. Definitions.

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

(2) 'Prescribed burning' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"§ 113-60.42. Immunity from liability.

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of Environment and Natural Resources. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment and Natural Resources. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under Article 4C of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of Environment and Natural Resources.

(5) Any rules adopted by the Division of Forest Resources, Department of Environment and Natural Resources, to implement this Article.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources, Department of Environment and Natural Resources, may adopt rules that govern prescribed burning under this Article.

"**§ 113-60.45. Exemption.**

This Article does not apply when the Secretary of Environment and Natural Resources has cancelled burning permits pursuant to G.S. 113-60.27 or prohibited all open burning pursuant to G.S. 113-60.25."

Section 2. This act becomes effective January 1, 2000.

HOUSE BILL 316:
Prescribed Burning in Forests/AB

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	McComas and Owens
Date:	April 13, 1999	**Summary by:**	Barbara Riley, Staff Attorney
Version:	1st Edition		Susan L. Hayes
			Committee Counsel

SUMMARY: House Bill 316 would add a new Article 4E to Chapter 113 of the General Statutes setting forth the conditions for conducting a "prescribed burning" of forestland and limiting the liability of landowners and their agents for nuisance and smoke damage from a properly conducted burning.

BACKGROUND: A "prescribed burning" is a planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and environmental conditions, while following appropriate measures to confine the fire to a predetermined area and to accomplish the intended management objectives. The legislative findings contained in proposed G.S.113-60.40 establish that prescribed burning is a beneficial management tool that reduces the naturally occurring buildup of vegetative fuels thus reducing the risk and severity of wildfires and their damage. Prescibed burning is also found to benefit game, nongame and endangered species of wildlife by improving habitat, and to improve forestland by preparing sites for replanting and natural seeding, controlling insects and disease.

BILL ANALYSIS New G.S. 113-60.42 provides that a prescribed burning conducted pursuant to the the provisions of G.S. 113-60.43 does not constitute a public or private nuisance. A landowner or his agent conducting a prescribed burning in accordance with the statute shall not be not liable in a civil action for damages or injury resulting from smoke . The limitation on liability does not apply, however, where the nuisance or damage results from the negligent or improper conduct of the prescribed burning.

G.S. 113-60.43 sets forth the guidelines for a prescribed burning. Subsection (a) requires that a prescription for a prescribed burning must be prepared by a certified prescribed burner and be filed with the Division of Forest Resources prior to the burn. A certified prescribed burner is an individual who has successfully completed a certification program approved by the Division of Forest Resources. G.S. 113-60.41(1). The prescription shall include:

1. The landowner's name and address.
2. A description of the area to be burned.
3. A map of the area.
4. An estimate of the fuel tonnage in the area.
5. The objectives of the prescibed burning.
6. A list of acceptable weather conditions for the burning.
7. The certified burner responsible for the burning.
8. A summary of the methods used to start, control, and extinguish the burn.

9. Provision for reasonable notice to homes and businesses in the area.

The prescribed burning must be conducted by the certified prescribed burner who shall be present on site and in charge throughout the burn. An exception to this provision allows a landowner to conduct the prescribed burning when the forestland acreage to be burned is less than 50 acres and the landowner conducts the prescribed burning according to a prescription prepared by a certified prescription burner.

The landowner or his agent must obtain an open burning permit from the Division of Forest Resources. The prescribed burning also must be conducted in accordance with the terms of the open burning permit, all State air pollution control statutes, local open burning ordinances, the voluntary smoke management guidelines set by the Division of Forest Resources, and any rules the Division adopts to implement this Article.

The terms of this article are not applicable when the Secretary of DENR has cancelled burning permits or prohibited all open burning.

The act becomes effective January 1, 2000.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 316

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

H316-ASA-041

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Miller

moves to amend the bill on page 2, line 43,
by rewriting the line to read:
"(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a"

SIGNED Miller
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 316 A BILL TO BE ENTITLED AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE UNDER 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 316
Proposed Committee Substitute H316-PCS3370-SA

Short Title: Prescribed Burning in Forests/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the

perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 113-60.41. Definitions.

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

(2) 'Prescribed burning' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"§ 113-60.42. Immunity from liability.

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of Environment and Natural Resources. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment and Natural Resources. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under Article 4C of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of Environment and Natural Resources.

(5) Any rules adopted by the Division of Forest Resources, Department of Environment and Natural Resources, to implement this Article.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources, Department of Environment and Natural Resources, may adopt rules that govern prescribed burning under this Article.

"**§ 113-60.45. Exemption.**

This Article does not apply when the Secretary of Environment and Natural Resources has cancelled burning permits pursuant to G.S. 113-60.27 or prohibited all open burning pursuant to G.S. 113-60.25."

Section 2. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1133
Proposed Committee Substitute H1133-PCSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Health Ins./Liability. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

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 1G.

"Health Care Liability.

"§ 90-21.50. Definitions.

As used in this Article, unless the context clearly indicates otherwise, the term:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to

that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Health and Human Services or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident;
b. Credit;
c. Disability income;
d. Long-term or nursing home care;
e. Medicare supplement;
f. Specified disease;
g. Dental or vision;
h. Coverage issued as a supplement to liability insurance;
i. Workers' compensation;
j. Medical payments under automobile or homeowners;
k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance; and
l. Hospital income or indemnity.

(2) 'Health care provider' means:

a. An individual who is licensed, certified, or otherwise authorized under this Chapter to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients;

'Health care provider' includes:

1. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services;
2. The officers and directors of a health care facility; and
3. An agent or employee of a health care provider who is licensed, certified, or

otherwise authorized to provide health care services.

(3) 'Health care service' means a health or medical procedure or service rendered by a health care provider that:

a. Provides testing, diagnosis, or treatment of a human disease or dysfunction; or

b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction.

(4) 'Health care treatment decision' means a determination made when health care services are provided for, arranged for, paid for, or reimbursed by an insurer or managed care entity under a health benefit plan that affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(5) 'Insured or enrollee' means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(6) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, or a multiple employer welfare arrangement subject to Article 49 of Chapter 58 of the General Statutes.

(7) 'Managed care entity' means an entity that:

a. Delivers, administers, or undertakes to provide, arrange for, or reimburse for health care services, or assumes the risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

'Managed care entity' does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the

employer, or (ii) a pharmacy that is issued a permit by the North Carolina State Board of Pharmacy under this Chapter.

(8) 'Ordinary care' means:

a. For an insurer or managed care entity, that degree of care that an insurer or managed care entity of ordinary prudence would use under the same or similar circumstances; or

b. For a person that is an agent or employee of an insurer or managed care entity, that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as the person would use in the same or similar circumstances.

(9) 'Physician' means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

"§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.

(a) Each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each insurer or managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has the right to exercise influence or significant control with respect to the actual care and treatment of the insured or enrollee which results in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against an insurer or managed care entity for a health benefit plan that:

(1) Neither the insurer or managed care entity nor an agent or employee for whom the insurer or managed

care entity is liable under subsection (b) of this section controlled, influenced, or participated in the health care treatment decision; and

(2) The insurer or other managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled.

(d) In an action brought under this Article against an insurer or managed care entity, a finding that a physician or health care provider is an agent or employee of the insurer or managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the insurer's or managed care entity's health benefit plan.

(e) In any action brought under this Article against an insurer or managed care entity, any law that prohibits the corporate practice of medicine may not be used as a defense by the insurer or managed care entity.

(f) An insurer or managed care entity shall not be liable for the independent actions of a health care provider, who is not an agent or employee of the insurer or managed care entity, when that health care provider fails to exercise the standard of care required by G.S. 90-21.12. A health care provider shall not be liable for the independent actions of an insurer or managed care entity when the insurer or managed care entity fails to exercise the standard of care required by this Article.

(g) Nothing in this Article imposes liability on a physician or health care provider in addition to that otherwise imposed under existing law. No insurer or managed care entity held liable under this Article shall be entitled to contribution under Chapter 1B of the General Statutes from a physician or health care provider, except where there is joint and several liability.

(h) Nothing in this Article shall be construed to create an obligation on the part of an insurer or managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

(i) A health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. Any such indemnification or hold harmless clause is void and unenforceable to the extent of the restriction.

"§ 90-21.52. No liability under this Article on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a pharmacy.

This Article does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy under this Chapter.

"§ 90-21.53. Separate trial required.

Upon motion of any party in an action brought pursuant to this Article involving an insurer or managed care entity, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against any physician or other health care provider."

Section 2. G.S. 1A-1, Rule 42, reads as rewritten:

"**Rule 42. Consolidation; separate trials.**

(a) Consolidation. -- ~~When~~ Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. --

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, ~~crossclaim,~~ cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, ~~crossclaims,~~ cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action instituted pursuant to Article 1G of Chapter 90 of the General Statutes involving an insurer, as defined in G.S. 90-21.50, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider."

Section 3. This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VIII

(Please type or use ballpoint pen)

H. B. No. 1133 DATE

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

(Rep.) Ellis
Sen.)

moves to amend the bill on page 3, line 33

by deleting "provide," and inserting "provide for,"

SIGNED

ADOPTED FAILED TABLED

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

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1133

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

H1133-ASA-040

Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1133-PCSSA-002

Representative Moore

moves to amend the bill on page 5, line 40,
by rewriting the line to read:
"provider, or with an employer or employer group organization, that includes an indemnification or hold harmless clause"

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1133 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

☐ 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

HOUSE BILL 1133
Proposed Committee Substitute H1133-PCS1226-SA

Short Title: Health Ins./Liability. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INSURER PROVIDING A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR HARM TO ITS INSUREDS OR ENROLLEES CAUSED BY THE INSURER'S FAILURE TO EXERCISE ORDINARY CARE.

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 1G.

"Health Care Liability.

"**§ 90-21.50. Definitions.**

As used in this Article, unless the context clearly indicates otherwise, the term:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Health and Human

Services or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident;
b. Credit;
c. Disability income;
d. Long-term or nursing home care;
e. Medicare supplement;
f. Specified disease;
g. Dental or vision;
h. Coverage issued as a supplement to liability insurance;
i. Workers' compensation;
j. Medical payments under automobile or homeowners;
k. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance; and
l. Hospital income or indemnity.

(2) 'Health care provider' means:

a. An individual who is licensed, certified, or otherwise authorized under this Chapter to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program; or
b. A health care facility, licensed under Chapters 131E or 122C of the General Statutes, where health care services are provided to patients;

'Health care provider' includes:

1. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services;
2. The officers and directors of a health care facility; and
3. An agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services.

(3) 'Health care service' means a health or medical procedure or service rendered by a health care provider that:

a. Provides testing, diagnosis, or treatment of a human disease or dysfunction; or
b. Dispenses drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction.

(4) 'Health care treatment decision' means a determination made when health care services are provided for, arranged for, paid for,

or reimbursed by an insurer or managed care entity under a health benefit plan that affects the quality of the diagnosis, care, or treatment provided to an enrollee or insured of the health benefit plan.

(5) 'Insured or enrollee' means a person that is insured by or enrolled in a health benefit plan under a policy, plan, certificate, or contract issued or delivered in this State by an insurer.

(6) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to Chapter 58 of the General Statutes, a service corporation organized under Article 65 of Chapter 58 of the General Statutes, a health maintenance organization organized under Article 67 of Chapter 58 of the General Statutes, or a multiple employer welfare arrangement subject to Article 49 of Chapter 58 of the General Statutes.

(7) 'Managed care entity' means an entity that:

a. Delivers, administers, or undertakes to provide for, arrange for, or reimburse for health care services, or assumes the risk for the delivery of health care services; and

b. Has a system or technique to control or influence the quality, accessibility, utilization, or costs and prices of health care services delivered or to be delivered to a defined enrollee population.

'Managed care entity' does not include: (i) an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer, or (ii) a pharmacy that is issued a permit by the North Carolina State Board of Pharmacy under this Chapter.

(8) 'Ordinary care' means:

a. For an insurer or managed care entity, that degree of care that an insurer or managed care entity of ordinary prudence would use under the same or similar circumstances; or

b. For a person that is an agent or employee of an insurer or managed care entity, that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as the person would use in the same or similar circumstances.

(9) 'Physician' means:

a. An individual licensed to practice medicine in this State;

b. A professional association or corporation organized under Chapter 55B of the General Statutes; or

c. A person or entity wholly owned by physicians.

"§ 90-21.51. Duty to exercise ordinary care; liability for damages for harm.

(a) Each insurer or managed care entity for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for

damages for harm to an insured or enrollee proximately caused by its failure to exercise ordinary care.

(b) In addition to the duty imposed under subsection (a) of this section, each insurer or managed care entity for a health benefit plan is liable for damages for harm to an insured or enrollee proximately caused by the health care treatment decisions made by:

(1) Its agents or employees; or

(2) Representatives that are acting on its behalf and over whom it has the right to exercise influence or significant control with respect to the actual care and treatment of the insured or enrollee which results in the failure to exercise ordinary care.

(c) It shall be a defense to any action brought under this section against an insurer or managed care entity for a health benefit plan that:

(1) Neither the insurer or managed care entity nor an agent or employee for whom the insurer or managed care entity is liable under subsection (b) of this section controlled, influenced, or participated in the health care treatment decision; and

(2) The insurer or other managed care entity did not deny or delay payment for any health care service or treatment prescribed or recommended by a physician or health care provider to the insured or enrolled.

(d) In an action brought under this Article against an insurer or managed care entity, a finding that a physician or health care provider is an agent or employee of the insurer or managed care entity may not be based solely on proof that the physician or health care provider appears in a listing of approved physicians or health care providers made available to insureds or enrollees under the insurer's or managed care entity's health benefit plan.

(e) In any action brought under this Article against an insurer or managed care entity, any law that prohibits the corporate practice of medicine may not be used as a defense by the insurer or managed care entity.

(f) An insurer or managed care entity shall not be liable for the independent actions of a health care provider, who is not an agent or employee of the insurer or managed care entity, when that health care provider fails to exercise the standard of care required by G.S. 90-21.12. A health care provider shall not be liable for the independent actions of an insurer or managed care entity when the insurer or managed care entity fails to exercise the standard of care required by this Article.

(g) Nothing in this Article imposes liability on a physician or health care provider in addition to that otherwise imposed under existing law. No insurer or managed care entity held liable under this Article shall be entitled to contribution under Chapter 1B of the General Statutes from a physician or health care provider, except where there is joint and several liability.

(h) Nothing in this Article shall be construed to create an obligation on the part of an insurer or managed care entity to provide to an insured or enrollee a health care service or treatment that is not covered under its health benefit plan.

(i) A health insurer or managed care entity may not enter into a contract with a physician, hospital, or other health care provider, or with an employer or employer group organization, that includes an indemnification or hold harmless clause for the acts or conduct of the health insurer or managed care entity. Any such indemnification or hold harmless clause is void and unenforceable to the extent of the restriction.

"§ 90-21.52. No liability under this Article on the part of an employer or employer group organization that purchases coverage or assumes risk on behalf of its employees or a pharmacy.

This Article does not create any liability on the part of an employer or employer group purchasing organization that purchases health care coverage or assumes risk on behalf of its employees or a pharmacy issued a permit by the North Carolina Board of Pharmacy under this Chapter.

"§ 90-21.53. Separate trial required.

Upon motion of any party in an action brought pursuant to this Article involving an insurer or managed care entity, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against any physician or other health care provider."

Section 2. G.S. 1A-1, Rule 42, reads as rewritten:

"Rule 42. Consolidation; separate trials.

(a) Consolidation. -- ~~When~~ Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; he may order all the actions consolidated; and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and he may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. --

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, ~~crossclaim,~~ cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, ~~crossclaims,~~ cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action instituted pursuant to Article 1G of Chapter 90 of the General Statutes involving an insurer, as defined in G.S. 90-21.50, the court shall order a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider."

Section 3. This act is effective when it becomes law and applies to causes of action arising on and after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1022

Short Title: Unlawful Use of Drivers License. (Public)

Sponsors: Representatives Allen; and Barefoot.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"**§ 20-30. Violations of license or learner's permit provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of

the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. Any person, firm, or corporation violating the provisions of this subdivision shall be guilty of a Class H felony.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit which contains a false or fictitious name in conjunction with the commission or attempted commission of a felony. Any person, firm, or corporation violating the provisions of this subdivision shall be guilty of a Class H felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"**§ 20-37.8. Fraudulent use prohibited.**

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in connection with the commission or attempted commission of a felony.

(c) A violation of subsection (a) or subsection (b) of this section shall constitute a ~~Class 2 misdemeanor.~~ Class H felony."

Section 2. This act becomes effective December 1, 1999.

Reasons for House Bill 1022

- The number one fraud problem facing financial institutions and law enforcement agencies is the counterfeiting of commercial checks.
- Readily available computer software meant for legitimate businesses can be purchased for less than $100, enabling the buyer to produce high-quality MICR-encoded checks.
- These checks of equal quality to their legitimate counterparts are easily cashed with accompanying identification documents.
- Banks in North Carolina report that the cashing of almost all-counterfeit commercial checks is facilitated by fraudulently obtained North Carolina special identification cards or driver's licenses.
- Fraudulent identification is obtained from the Division of Motor Vehicles (DMV) using false birth certificates, tax documents, school records or social security documents that are easily fabricated using commonly available computer programs or using high-quality fakes sold on the Internet.
- The Secret Service has developed suspects who have obtained as many as 15 North Carolina identification documents in different names.
- This law would deter criminals from attempting to obtain false identification by putting a substantial penalty on the act.
- This law would give DMV and other law enforcement agencies (federal, state and local) a much-needed tool to prosecute these criminals when prosecutors for various reasons decline other charges.
- This law would enhance officer safety by denying anonymity to criminals.
- At present, this crime is virtually penalty free.



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Below was taken from **The World Intellectual Property Organization**, Geneva, Switzerland.

"Acquisition of Copyright

The laws of almost all countries provide that protection is independent of any formalities, that is, copyright protection starts as soon as the work is created.

Duration

Copyright protection is limited in time. Many countries have adopted, as a general rule, a term of protection that starts at the time of the creation of the work and ends 50 years (in some countries, 70 years) after the death of the author. However, in some countries, there are exceptions either for certain kinds of works (e.g., photographs, audiovisual works) or for certain uses (e.g., translations). "

Below are US records regarding Copyright infringement

17 USC Sec. 504



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504. Remedies for infringement: Damages and profits

(a) In General. - Except as otherwise provided by this title, an infringer of copyright is liable for either -

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) Actual Damages and Profits. - The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages. -

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than $500 or more than $20,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $100,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court it (FOOTNOTE 1) its discretion may reduce the award of statutory damages to a sum of not less than $200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by

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(FOOTNOTE 1) So in original. Probably should be "in".

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NORTH CAROLINA

State Seals:



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ID Number:

12 digits, no spaces, no codes

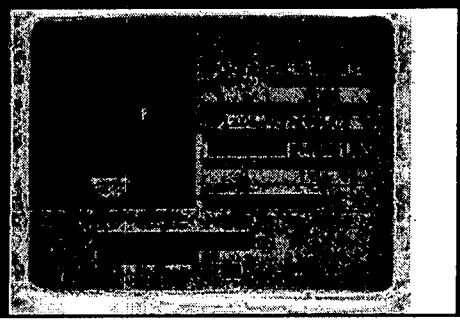
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HOUSE BILL 1022:
Unlawful Use of Drivers License

BILL ANALYSIS

Committee: House Judiciary I
Date: April 20, 1999
Version: 1st Edition

Introduced by: Rep. Allen
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: House Bill 1022 prohibits the unlawful use of a drivers license, a learner's permit, or a special identification card.

BILL ANALYSIS: House Bill 1022 increases the punishment for using a false or fictitious name or address, or giving false information when applying for a drivers license, learner's permit or special identification card, and also for the presentation, display, or use of a drivers license, learner's permit or special identification card in connection with the commission or attempted commission of a felony. The punishment is increased from a Class 2 misdemeanor to a Class H felony.

This act becomes effective December 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XVI**

(Please type or use ballpoint pen) Ellis #1

H. B. No. 1022 DATE _____

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

(Rep.) Ellis
Sen.)

moves to amend the bill on page 2, line 3-5

by deleting the underlined language.

and on page 2 line 40-41 by rewriting the lines to read:

"(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class H felony."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT #2 Nesbitt **ATTACHMENT XVII**

(Please type or use ballpoint pen)

EDITION No. 1022

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
Sen.)

1 moves to amend the bill on page 2, line 28, 41 (as amended)
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "H" and inserting "I".
4
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18
19

SIGNED Martha Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1022 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

☐ 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

HOUSE BILL 1022
Proposed Committee Substitute H1022-PCS3369-SA

Short Title: Unlawful Use of Drivers License. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"**§ 20-30. Violations of license or learner's permit provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to

procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit which contains a false or fictitious name in conjunction with the commission or attempted commission of a felony. Any person, firm, or corporation violating the provisions of this subdivision shall be guilty of a Class I felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"**§ 20-37.8. Fraudulent use prohibited.**

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in connection with the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony."

Section 2. This act becomes effective December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1169
Proposed Committee Substitute H1169-PCS2309-LB

Short Title: Succession Technical Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE GUBERNATORIAL SUCCESSION ACT SO IT IS CLEAR THAT THE SPEAKER OF THE HOUSE OF REPRESENTATIVES BECOMES ACTING GOVERNOR IN THE ABSENCE OR DISABILITY OF THE GOVERNOR AND LIEUTENANT GOVERNOR.

Whereas, the General Statutes provide that the President of the Senate is to become Acting Governor in the absence or disability of the Governor and Lieutenant Governor, with the Speaker of the House of Representatives being next in line; and

Whereas, while there is a Lieutenant Governor, the Lieutenant Governor is in fact President of the Senate so the provision can never apply; and

Whereas, if there is a Lieutenant Governor, then the President Pro Tempore does not become President of the Senate under Section 14 of Article II of the Constitution if the Lieutenant Governor is absent or disabled; and

Whereas, it has been unclear in practice who is next in line to be Acting Governor in the absence or disability of the Governor and Lieutenant Governor; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-11.1(c) reads as rewritten:

"(c) Acting Governor Generally. --

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor

qualified to discharge the powers and duties of the office of Governor, then the ~~President of the Senate~~ Speaker of the House of Representatives shall become Acting Governor.

~~(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.~~

(3) If, at the time when under subdivision ~~(2)~~ (1) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

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) **Hackney** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1169 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE GUBERNATORIAL SUCCESSION ACT SO IT IS CLEAR THAT THE PRESIDENT PRO TEMPORE OF THE SENATE CAN BECOME ACTING GOVERNOR IN THE ABSENCE OR DISABILITY OF THE GOVERNOR AND LIEUTENANT GOVERNOR, AND TO ALTERNATE BY YEAR BETWEEN THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PRESIDENT PRO TEMPORE OF THE SENATE THE NEXT RANK BELOW THE LIEUTENANT GOVERNOR THE RIGHT TO BECOME ACTING GOVERNOR.

☐ 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

HOUSE BILL 1130

Short Title: Limit Y2K Liability. (Public)

Sponsors: Representatives Tolson; Cansler and Hurley.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA TORT CLAIMS ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR TORT DAMAGES BASED ON CERTAIN COMPUTER FAILURES, TO PROTECT THE STATE FROM BREACHING CONTRACTS DUE TO CERTAIN COMPUTER FAILURES, AND TO PROTECT STATE AND LOCAL GOVERNMENT EMPLOYEES FROM PERSONAL LIABILITY DUE TO CERTAIN COMPUTER FAILURES.

The General Assembly of North Carolina enacts:

Section 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.4. Exclusion from liability.**

(a) Notwithstanding any other law, the State shall not be presumed to have waived its sovereign immunity from any claim arising from the failure of a computer, software program, database, network, information system, firmware, or any other device operated by or on behalf of a State agency to interpret, produce, calculate, generate, or account for a date which is compatible with the 'Year 2000' date change."

Section 2. Article 31A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.12. Protection from liability.**

(a) No employee of the State shall be held liable for any claim arising from or relating to the failure of a computer, software program, database, network, information system, firmware, or any other device, operated by or on behalf of the governmental employee in the discharge of the employee's official responsibilities to

interpret, produce, calculate, generate or, account for a date which is compatible with the 'Year 2000' date change. The immunity conferred by this section shall not apply if the act or omission at issue was the result of gross negligence or willful misconduct of the employee.

(b) The limit on liability set forth in subsection (a) of this section shall also apply to any employee of any political subdivision, agency, or instrumentality of the State."

Section 3. Article 8 of Chapter 143 of the General Statutes is amended by adding the following sections to read:

"**§ 143-133.1. Limitation on breach of contract.**

(a) Failure by the State, or any of its political subdivisions, to perform under any contract on the basis of the failure of a computer, software program, database, network, information system, firmware, or any other device, operated by or on behalf of the State or political subdivision to interpret, produce, calculate, generate, or account for a date which is compatible with the 'Year 2000' date change, shall not constitute a breach of contract by the State or political subdivision, and the State or political subdivision shall not be liable under contract for any damages resulting from the failure.

(b) Beginning May 1, 1999, any contract entered into by or on behalf of and in the capacity of the State of North Carolina or any of its political subdivisions shall include a provision that provides immunity to the State or political subdivision for any breach of contract that is caused by an incorrect date being produced, calculated, or generated by a computer or other information system that is owned or operated by the State or political subdivision, regardless of the cause of the error.

(c) Any contract subject to the provisions of this section that is entered into on or after May 1, 1999, has the legal effect of including the immunity required by this section, and any provision of the contract which is in conflict with this section is void.

"**§ 143-133.2. Court-ordered mediation of certain contract disputes.**

Whenever it appears to the court, from the pleadings or otherwise, that a civil action involves a contested issue as to whether the liability of the State or any political subdivision is subject to limitation under G.S. 143-133.1, the matter shall be set for mediation, and the parties and their representatives shall be required to attend a pretrial mediated settlement conference conducted pursuant to G.S. 7A-38.1 and pursuant to rules of the Supreme Court adopted to implement G.S. 7A-38.1. For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting of a matter for mediation. Good cause may include, but is not limited to, a showing of undue hardship to a party or an agreement between the parties for voluntary mediation, subject to court approval."

Section 4. This act is effective when it becomes law and shall expire on January 1, 2006. The act applies to contracts in force on or after the effective date.

ATTACHMENT XXIII

HOUSE BILL 1130: Limit Y2K Liability

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Tolson
Date:	April 22, 1999	**Summary by:**	Brenda J. Carter, Staff Attorney
Version:	1st Edition		

SUMMARY: House Bill 1130 would amend the Tort Claims Act to provide immunity for the State from liability for tort damages based on computer failures related to the Year 2000 date change. The proposed legislation would protect State and local government employees from personal liability related to their work with failed computer systems. The bill would protect the State and its political subdivisions from being in breach of a contract solely on the basis of a Year 2000-related failure of computer systems, and would provide for court-ordered mediation of those contract disputes.

CURRENT LAW: Most State government functions are covered by the blanket of sovereign immunity, under which the State cannot be sued for negligent acts without its consent. The State has waived its sovereign immunity in limited situations under the Tort Claims Act. The State has also agreed to defend its employees from negligent acts arising in the scope of their employment, up to the limit of the Tort Claims Act. The Tort Claims limit is currently $150,000 per claim. However, when the State enters into an express, written contract it is deemed to have waived its immunity from suit for breach of that contract. Individual State agencies have authority to purchase insurance to protect their employees from claims in excess of the Tort Claims limit through a discretionary insurance policy that basically provides non-automobile liability coverage up to $1 million on most State employees.

In North Carolina, the rule of sovereign immunity extends to cities, counties and local education authorities when those entities are acting in their governmental capacity. Those bodies may be sued for negligence in performing governmental duties, but only to the extent that they have liability insurance coverage. There is an important distinction between functions that are deemed proprietary rather than governmental. A local government acts in its governmental capacity when it promotes the health, safety, security or general welfare of its citizens. Installing and maintaining traffic signals, maintaining a public library or have been held to be governmental functions. The supplying of electricity for profit and the operation of a coliseum to produce revenue have been held to be proprietary functions.

Public officials are immune from liability for negligence in performing governmental duties involving the exercise of judgment and discretion, but not for conduct outside the scope of their authority or for acts that are corrupt or malicious. Government employees, as opposed to government officials, are generally liable for negligence committed in the performance of their duties.

BILL ANALYSIS: Section 1 of the bill restores the State's underlying immunity that has been modified by the Tort Claims Act. It makes it clear that with regard to Year 2000-related computer failures, the State does not waive its sovereign immunity. Section 2 addresses the liability of State and local government employees, and provides that employees are not personally liable for any claims arising from their work with computer systems that are incompatible with the Year 2000 date change.

Since the normal blanket sovereign immunity does not cover contract relationships, Section 3 of the bill provides that the State will not be liable for breaching a contract solely on the basis of Year 2000-related computer failures. Beginning May 1, 1999 any State contracts would contain a provision that provides immunity to the State for any breach of contract caused by a Year 2000 date problem. Section 4 of the bill provides for court-ordered mediation of contract disputes where the State or a local government is a party to a contract and there is a contested issue as to the State's liability for breach that involves a Year 2000-related computer failure.

EFFECTIVE DATE: The bill would be effective when it becomes law, and would apply to contracts in force on or after that date. It would expire on January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1131*

Short Title: Raise State Tort Claims Cap. (Public)

Sponsors: Representatives Walend, Nesbitt (Primary Sponsors); Barefoot, Cansler, Church, Culp, Luebke, and Sherrill.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) cumulatively to all claimants on account of injury and damage to

any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

Section 2. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be ~~one hundred fifty thousand dollars ($150,000),~~ three hundred thousand dollars ($300,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

Section 3. This act is effective when it becomes law and applies to judgments entered on or after that date.

HOUSE BILL 1131:
Raise State Tort Claims Cap

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Walend and Nesbitt
Date:	April 22, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1131 amends G.S. 143-291(a) to increase the limit on claims under the State Tort Claims Act from $150,000 to $300,000. The act is effective when it becomes law and applies to judgments entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1157

Short Title: Increase Small Claims Amount. (Public)

Sponsors: Representatives Nesbitt, Redwine; and Baddour.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars ($3,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. This act becomes effective July 1, 1999, and applies to claims filed for causes of action arising on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT XXVII

(Please type or use ballpoint pen) Nesbitt adopted

PAGE 1 OF 2

EDITION No. _____

H. B. No. 1157 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
(Sen.)

moves to amend the bill on page 1, line 19-20

( ) WHICH CHANGES THE TITLE

by inserting between the lines a new section to read:

"Section 2. G.S. 42-34(b) reads as rewritten:

'(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in ~~arrears~~ arrears, not to exceed three-thousand dollars ($3,000.00), as determined by the magistrate and signs an undertaking that ~~he or she~~ the person will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with Subdivision (c) below. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of Superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1157 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Nesbit
Sen.)

1 moves to amend the bill on page _____, line _____
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 before the magistrate and the magistrate found an amount of rent in arrears
5 that was not in dispute, and if an attorney representing the defendant appellant
6 on appeal to the district court signs a pleading stating that there is evidence
7 of an actual dispute as to the amount of rent in arrears, then the defendant
8 appellant shall not be required to pay the rent in arrears alleged to be in
9 dispute to stay execution of a judgment for ejectment pending appeal. Any
10 magistrate, clerk, or district court judge shall order stay of execution upon
11 the defendant appellant's paying the undisputed rent in arrears to the
12 clerk and signing the undertaking. If either party disputes the amount of
13 the payment or the due date in the undertaking, the aggrieved party may
14 move for modification of the terms of the undertaking before the clerk of superior
15 court or the district court. Upon such motion and upon notice to all
16 interested parties, the clerk of court shall hold a hearing and determine
17 what modifications, if any are appropriate." ''
18 _____
19 and by renumbering the remaining sections accordingly.

SIGNED Martha Nesbit

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT XXVIII

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1157 A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ 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

HOUSE BILL 1157
Proposed Committee Substitute H1157-PCS3368-SA

Short Title: Increase Small Claims Amount. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars ($3,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in ~~arrears~~ arrears, not to exceed three thousand dollars ($3,000), as

determined by the magistrate and signs an undertaking that ~~he or she~~ the person will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate."

Section 3. This act becomes effective July 1, 1999, and applies to claims filed for causes of action arising on or after that date.

HOUSE JUDICIARY I COMMITTEE
April 23,1999
8:30 a.m.
Minutes

The House Judiciary I Committee met on Friday, April 23, 1999 at 8:30 a. m., in Room 415 of the Legislative Office Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Boyd-McIntyre, Clary, Ellis, Insko, Miller, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Representative Clary was recognized to explain **House Bill 1245, AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE**, (Attachment II). She distributed a proposed committee substitute, (Attachment III), and moved its adoption for the purpose of committee discussion. The motion carried.

Ms. Susan L. Hayes, Committee Counsel, was recognized for explanation of the bill. Ms. Hayes reviewed existing law regarding first and second-degree sexual offenses. She stated that the bill creates a new crime of third degree and differs from first and second-degree offenses in that it does not require a sexual act. It would only require that the person by forcing his will, would take or attempt to take any immoral, improper or indecent liberties with a person of either sex that is 16 years of age or older. Additional explanation is found in the bill summary prepared by Ms. Hayes is attached, (Attachment IV).

Representative Hackney asked how the new law would differ from indecent liberties law. Ms. Hayes replied that the indecent liberties law applies to persons under the age of 16, and this bill addresses victims who are 16 or older.

Major Dennis Crosby, Gastonia Police Department, was recognized for remarks relating to incidences in which there was a need for the ability to make a third-degree sexual offense charge.

There was discussion regarding the possibility of this being a lesser included offense of first and second-degree and whether an additional plea bargaining situation might occur. Ms. Hayes reviewed the penalties for the various classes of felonies.

Representative Ellis spoke in support of the bill, and stated that he would like to make a motion for a favorable report at the proper time.

The bill was removed until more members could be present for a vote.

Representative Walend was recognized to continue the discussion of **House Bill 1131, AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT**, (Atttachment V). The bill was discussed during the April 22, 1999 meeting of the committee. A summary of the bill is attached, (Attachment VI).

Mr. E. H. Bunting, Jr., Office of the Attorney General, was recognized to comment on the bill. He responded to questions regarding the effective date, and whether there is a difference between a judgment and a settlement. He noted that there is a difference, but that the difference could be solved by simply adding "settlements" to the sentence on page 2, line 16 of the bill.

Chairman Hackney noted that the bill attempts to cover a particularly horrendous automobile accident, and said that the General Assembly for the most part does not make laws that apply to pending litigation. He asked how many cases which would fall between $150,000 and $300,000 would be affected by the passage of this bill.

Mr. Bunting replied that to the best of his judgment, there would be 25 or 30 cases.

Representative Ellis questioned the statute of limitations for filing a claim.

Mr. Bunting replied that the statute of limitations is three years for injury and two years for wrongful death.

Committee discussion followed. Chairman Hackney noted that he felt that this bill would require a re-referral to Appropriations.

Representative Ellis offered an amendment, (Attachment VII), and moved its adoption. The amendment would allow that all judgments and settlements be included in the bill. The amendment was adopted.

Chairman Hackney noted that he would like to seek a clarification from the Chairman of the Rules Committee with regard to the bill, and allow the committee to have additional time for work on the bill after the crossover deadline.

Chairman Hackney asked if Mr. Bunting had figures regarding what the lifting of the cap would cost state-wide.

Mr. Bunting replied that the estimated cost could be around 6 million.

A vote on the bill was delayed.

Representative Insko was asked to preside during the presentation of the following bill.

Representative Hackney was recognized for explanation of **House Bill 1248, AN ACT TO BRING G.S. 14-190.9 INTO CONFORMITY WITH G.S. 14-190.1**, (Attachment VIII). He stated that the bill was introduced at the request of people in the arts community. He said that there is an inconsistency between the obscene literature and exhibition statute, (14.190.1) and the indecent exposure statute (14-190.9). He said that the bill seeks to assure that 14.190.9, as applied, is constitutionally applied. He stated that his intent is not to change the law, but to make the law the same in both statutes.

Further explanation may be found in the bill summary, (Attachment IX).

Ms. Deborah Ross, ACLU of North Carolina, spoke briefly in support of the bill.

Mr. John Rustin, North Carolina Family Policy Council, spoke in opposition to the bill.

Representative Hackney challenged Mr. Rustin's comments. He noted that the bill does not change the law as Mr. Rustin had stated, nor does it take away from the local decision. He did agree that the bill did not provide for a rating system. He again stated that the purpose of the bill is not to change any law, but to place the standard in both statutes.

Representative Hackney moved that the bill be given a favorable report. The motion carried, (Attachment X).

Representative Miller was recognized to explain **House Bill 1200, AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE**, (Attachment XI). Representative Miller stated that the bill deals with the issue of journalists and their ability to gather and disseminate the news. He said that journalists are often subpoenaed to appear in court and divulge the sources from which information was obtained that was a part of the news dissemination process. He said that this raises the fundamental issue of freedom of the press. He said that if journalists are required to divulge their sources, those sources will no longer be available.

Mr. William Hawkins, North Carolina Press Association, was recognized to comment on the bill. Mr. Hawkins stated that the bill would offer North Carolina journalists the same qualified protection offered reporters in all but four or five states. He offered additional comment in support of the bill.

Mr. John Bussian, North Carolina Press Association, was recognized and spoke in support of the bill. He said that the bill essentially restores the protection that the courts have provided to journalists for thirty years in the state, and it codifies the rules by which lawyers would have to observe if they want to get the testimony of reporters and journalists.

Representative Miller stated that the bill does not grant an absolute privilege, but rather a "qualified" privilege. He said that if the court determines that a witness can give information that is needed in the court proceeding, then the court can, under certain conditions, enter an order to require that testimony must be presented.

No action was taken on the bill.

The meeting was adjourned at 10:00 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 23, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Rau	Grass Roots NC
Ben Miles, Jr	Grass Roots, NC
E. H. Bunting Jr.	Attorney General
J M May	N C C Legislative Council
William Hawkins	N. C. Press Association
John Bussian	"
Jack Cozort	Parker Poe Adams & Bernstein
Bruce Thompson	Parker Poe Adams & Bernstein
John McMillan	NFIB
Carr Carver	BPMHL
Amy Enlbright	Morton & Williams
[illegible]	NC Legislative Fiscal Research
[illegible]	NC Chamber
[illegible]	NCFPC
Henri McClees	McClees Consulting
Scott Hammond	NC AFL-CIO
Dennis Rowley	Gastonia Police Dept
Scott Wise	WNC-TV
[illegible]	AFL
Richard Westbrook	UTU
Thomas Vance Bennett	NCCFTF
Kelli Kukuka	DuPont

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1245

Short Title: 3rd Degree Sex Offense. (Public)

Sponsors: Representatives Clary; Barefoot, Bridgeman, Cansler, Carpenter, Dedmon, Gardner, Gulley, Horn, Justus, Kiser, Rayfield, and Russell.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Third-degree sexual offense.**

(a) A person is guilty of a sexual offense in the third degree if the person either:

(1) By force and against the will of the other person takes or attempts to take any immoral, improper, or indecent liberties with any person of either sex 16 years of age or older for the purpose of arousing or gratifying sexual desire; or

(2) By force and against the will of the other person commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any person of either sex 16 years of age or older.

(b) Third-degree forcible sexual offense is a Class F felony."

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 1245
Proposed House Committee Substitute H1245-PCSSA-001

Short Title: 3rd Degree Sex Offense. (Public)

Sponsors:

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Third-degree sexual offense.**

(a) A person is guilty of a sexual offense in the third degree if the person either:

(1) By force and against the will of the other person takes or attempts to take any immoral, improper, or indecent liberties with any person of either sex 16 years of age or older for the purpose of arousing or gratifying sexual desire; or

(2) By force and against the will of the other person commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any person of either sex 16 years of age or older.

(b) Third-degree forcible sexual offense is a Class F felony."

Section 2. G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3

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

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

HOUSE BILL 1245:
3rd Degree Sex Offense

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Clary
Date:	April 23, 1999	**Summary by:**	Susan L. Hayes
Version:	H1245-PCSSA-001		Committee Counsel

SUMMARY: House Bill 1245 creates the crime of third degree sexual offense.

BILL ANALYSIS: House Bill 1245 creates a new crime of third degree sexual offense, G.S. 14-27.5A. The offense provides that a person is guilty of the offense if either (1) by force and against the will of the other person takes any immoral, improper, or indecent liberties with any person of either sex 16 years of age or older for the purpose of arousing or gratifying sexual desire; or (2) by force and against the will of the other person commits any lewd or lascivious act upon or with the body or any part or member of the body of any person of either sex 16 years of age or older. The offense is a Class F felony.

The new offense is added to the definition of "sexually violent offense" in G.S. 14-208.6, and therefore makes the offenders subject to sex offender registration.

The bill is 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 1131*

Short Title: Raise State Tort Claims Cap. (Public)

Sponsors: Representatives Walend, Nesbitt (Primary Sponsors); Barefoot, Cansler, Church, Culp, Luebke, and Sherrill.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) cumulatively to all claimants on account of injury and damage to

any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

Section 2. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be ~~one hundred fifty thousand dollars ($150,000),~~ three hundred thousand dollars ($300,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

Section 3. This act is effective when it becomes law and applies to judgments entered on or after that date.

HOUSE BILL 1131:
Raise State Tort Claims Cap

BILL ANALYSIS

Committee: House Judiciary I
Date: April 22, 1999
Version: 1st Edition

Introduced by: Rep. Walend and Nesbitt
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: House Bill 1131 amends G.S. 143-291(a) to increase the limit on claims under the State Tort Claims Act from $150,000 to $300,000. The act is effective when it becomes law and applies to judgments entered on or after that date.

ATTACHMENT VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1131

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

H1131-ASA-044

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Representative Ellis

moves to amend the bill on page 2, line 16,
by rewriting the line to read:
"all judgments entered and all settlements finalized on or after
that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1248

Short Title: G.S. 14-190.9 Const. Conformity. (Public)

Sponsors: Representative Hackney and McMahan (Primary Sponsors).

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO BRING G.S. 14-190.9 INTO CONFORMITY WITH G.S. 14-190.1.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-190.9 is amended by adding a new subsection to read:

"(d) A person is not in violation of this section if the activity covered by this section occurs as part of a play, dance, performance, or artistic creation that contains serious literary, artistic, political, or scientific value."

Section 2. This act is effective October 1, 1999.

HOUSE BILL 1248:
G.S. 14-190.9 Const. Conformity

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney and McMahan
Date:	April 22, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

14-190.1.

SUMMARY: House Bill 1248 amends G.S. 14-190.9 to bring it into conformity with G.S. 14-190.1.

CURRENT LAW: The indecent exposure statute prohibits a person from willfully exposing the private parts of their person in any public place and in the presence of any other person or persons of the opposite sex. There is an exemption for a woman breast feeding. Violation of the law is a Class 2 misdemeanor.

BILL ANALYSIS: House Bill 1248 amends G.S. 14-190.9, indecent exposure, to provide that a person is not in violation of the indecent exposure statute if the activity occurs as part of a play, dance, performance, or artistic creation that contains serious literary, artistic, political, or scientific value. This is the same general standard used to determine obscenity.

The bill is effective October 1, 1999.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1248 A BILL TO BE ENTITLED AN ACT TO BRING G.S. 14-190.9 INTO CONFORMITY WITH G.S. 14.190.1.

☒ 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 1200

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any person, company, or entity engaged in gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the publication or distribution of news via printed or electronic means.

(b) No journalist shall be compelled to disclose in any legal proceeding the identity of any confidential informant or the contents or source of any confidential information obtained while acting as a journalist.

(c) Notwithstanding any other provision of law, a journalist has a qualified privilege against disclosure in any legal proceeding of any nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(d) In order to overcome the qualified privilege provided by subsection (c) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is critical or necessary to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

(e) In a proceeding to quash any subpoena on the basis of any privilege established by this section, the court may, after conducting a hearing, grant reasonable attorney fees and expenses to the prevailing party."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

HOUSE BILL 1200:
Journalists' Testimonial Privilege

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Miller
Date:	April 23, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1200 creates a new rule of evidence to provide a qualified privilege for journalists against disclosure of information in legal proceedings.***

BILL ANALYSIS: House Bill 1200 adds a new statute, G.S. 8-53.9, to the Chapter on evidence. The new statute provides that no journalist shall be compelled to disclose in any legal proceeding the identity of any confidential informant or the contents or source of any confidential information obtained while acting as a journalist. There is a qualified privilege against disclosure in any legal proceeding of any nonconfidential information, document, or item obtained while acting as a journalist.

To overcome the qualified privilege, a party must show by clear and convincing evidence that the testimony or production sought (1) is relevant and material to the proper administration of the legal proceeding; (2) cannot be obtained from alternate sources; AND (3) is critical or necessary to the maintenance of a claim or defense of the party seeking the testimony or production. The court may only compel disclosure after a hearing and specific findings of fact.

The statute provides for the recovery of attorneys fees and expenses by the party prevailing in a proceeding to quash a subpoena based on the privilege granted in the statute.

The bill is effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

HOUSE JUDICIARY I COMMITTEE

April 26, 1999

Agenda

House Bill 920 – Vehicular Injury to Pregnant Woman
Representative Starnes

House Bill 1048 – Amend Rule 4/Manner of Service
Representative Miller

House Bill 1056 – Limitation for Product Liability Action
Representative Miller

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

House Bill 1200 – Journalists' Testimonial Privilege
Representative Miller

House Bill 1231 – Safe Storage of Firearms
Representative Kinney

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

House Bill 1245 – 3rd Degree Sex Offense
Representative Clary

HOUSE JUDICIARY I COMMITTEE
April 26, 1999
2:00 p.m.
Minutes

The House Judiciary I Committee met on Monday, April 26,1999 at 2:00 p. m., in Room 1425 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Ellis, Gardner, Gray, Insko, Miller and Redwine. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Representative Miller was recognized to continue the discussion of **House Bill 1200, AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYINGTHE JOURNALISTS' TESTIMONIAL PRIVILEGE**, (Attachment II). The bill was explained and discussed at the April 23, 1999 meeting of the committee.

Representative Miller sent forward an amendment, (Attachment III), and moved its adoption. (The amendment had four separate parts that were voted on separately by the committee).

Ms. Susan Hayes, Committee Counsel, was recognized for explanation of the amendment. She stated that the amendment removed the absolute privilege for the confidential information and leaves it as a qualified privilege. The amendment would also make a change in the effective date.

Committee discussion followed.

Ms. Amanda Martin, attorney, North Carolina Press Association, and Mr. John Bussian, North Carolina Press Association, responded to questions.

The amendment was adopted.

Representative Miller offered a second amendment, (Attachment III), and moved its adoption. The amendment would conform the House bill to existing case law. The amendment was adopted.

Representative Miller offered a third amendment, (Attachment III), and moved its adoption. Representative Ellis spoke in opposition to the amendment. The amendment was adopted.

Representative Miller offered a fourth amendment, (Attachment III), and moved its adoption. The amendment was adopted.

Representative Miller moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report and the original bill be given an unfavorable report. The motion carried, (Attachment IV). A copy of the committee substitute is attached, (Attachment V).

Two handouts were distributed to members of the committee and are included in the attachments to the minutes, (Attachments VI and VII).

Representative Miller was again recognized to explain **House Bill 1048, AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY**, (Attachment VIII). The bill was previously explained and discussed in the morning meeting of the committee on April 20, 1999. A summary prepared by Ms. Hayes is attached, (Attachment IX).

Representative Miller addressed the question regarding the consequences of not complying with the requirement to file the manner of service with the court. He said that new language was being developed to address this issue, but was not ready for distribution.

Representative Miller was recognized to explain **House Bill 1056, AN ACT TO CHANGE THE SIX-YEAR STATUTE OF LIMITATIONS FOR PRODUCT LIABILITY AND UNSAFE IMPROVEMENTS TO REAL PROPERTY TO CREATE A REBUTTABLE PRESUMPTION**, (Attachment X). Representative Miller stated that the bill would extend the time frame within which an injured party may assert a claim.

A summary prepared by Ms. Hayes is attached, (XI).

Committee discussion followed and several questions were raised.

Mr. Richard Taylor, North Carolina Academy of Trial Lawyers, responded to questions and spoke in support of the bill.

Mr. John McMillian, North Carolina Citizens for Business and Industry, spoke in opposition to the bill.

No action was taken on the bill.

The meeting was adjourned at 10:50 am.

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

HOUSE JUDICIARY I COMMITTEE

April 23, 1999

Agenda

House Bill 1048 – Amend Rule 4/Manner of Service
Representative Miller

House Bill 1056 – Limitation for Product Liability Action
Representative Miller

House Bill 1131 – Raise State Tort Claims CAP
Representative Walend

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

House Bill 1200 – Journalists' Testimonial Privilege
Representative Miller

House Bill 1231 – Safe Storage of Firearms
Representative Kinney

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

House Bill 1245 – 3rd Degree Sex Offense
Representative Clary

House Bill 1248 – G.S. 14-190.9 Const. Conformity
Representative Hackney

VISITOR REGISTRATION SHEET

J-1 — Name of Committee

4-26-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NC-NAM
[illegible]	[illegible]
[illegible]	[illegible]
BEN MILES, JR	GRASS ROOTS NC
MIKE CONCANNON	GRASS ROOTS NC
John McMillan	MFIS
Jon Williams	CCPS
Henri McClees	McClees Consulting, Inc
Charles Cromer	NCATL
Barry Smith	Freedom Newspapers
[illegible]	NCAFL
Brenda Dougherty	Sprint
[illegible]	AT&T
Ruth Sapphire	NCDOT
John Williamson	NCDOT
Mike Calvaret	GRASS ROOTS NC
TOM BEATTIE	GRASS ROOTS, NC
Jeff Rau	Grass Roots NC
Gary Walker	ALLTEL
Catherine Davis	Electricities of NC
[illegible] Foster	GTE Service Corporation
[illegible]	NCAGV
Jack Cozort	"
BRUCE THOMPSON	"
Patrick Oakley	—
Amy Fulbright	Hunton & Williams
Andy Bowman	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1200

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

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(b) No journalist shall be compelled to disclose in any legal proceeding the identity of any confidential informant or the contents or source of any confidential information obtained while acting as a journalist.

(c) Notwithstanding any other provision of law, a journalist has a qualified privilege against disclosure in any legal proceeding of any nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(d) In order to overcome the qualified privilege provided by subsection (c) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

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Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

(e) In a proceeding to quash any subpoena on the basis of any privilege established by this section, the court may, after conducting a hearing, grant reasonable attorney fees and expenses to the prevailing party."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT III**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1200 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Miller

moves to amend the bill on page 1, line 20-22

( ) WHICH CHANGES THE TITLE

by deleting those lines and relettering the remaining subsections accordingly;

and on page 2, line 2 by inserting "confidential or" before "nonconfidential";

and on page 2, line 20 by deleting "December 1, 1999" and inserting "October 1, 1999";

and on page 2, line 4 by deleting "(c)" and inserting "(b)".

and on page 2, line 8 by inserting "highly" before the word "relevant"

and on page 2, line 11 by deleting "critical or necessary" and inserting "essential"

and on page 2, line 14 by inserting between the words "after" and "a" the following: "notice to the journalist and"

Amendment 1

Amend. Amendment 2

Amend. Amendment 3

Amend. 4

SIGNED Miller

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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By Representative(s) **Hackney** for the Committee on **JUDICIARY I.**

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H.B. 1200 A BILL TO BE ENTITLED AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNIALITS' TESTIMONIAL PRIVILEGE.

☐ 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

HOUSE BILL 1200
Proposed Committee Substitute H1200-PCS2322-SA

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

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(b) Notwithstanding any other provision of law, a journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

(d) In a proceeding to quash any subpoena on the basis of any privilege established by this section, the court may, after conducting a hearing, grant reasonable attorneys' fees and expenses to the prevailing party."

Section 2. This act becomes effective October 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

WHY A SHIELD LAW IS NEEDED IN NORTH CAROLINA

North Carolina's proposed shield law, or journalists' testimonial privilege, brings North Carolina in line with the laws of 30 other states and the District of Columbia. The law does not change existing state law. As proposed, the statute codifies state constitutional and common law and ensures that North Carolina's laws are consistent with judicial decisions of the state and federal courts.

Codification of the journalists' privilege will have the following beneficial effects for the citizens of North Carolina.

- It will ensure the free flow of information to the state's citizens.
- It will prevent government intrusion into newsrooms creating financial burdens on small newspapers.
- It will prevent civil trial attorneys from relying on reporters to provide discovery in cases.
- It will ensure that North Carolina law is consistent with federal law, discouraging forum shopping and the inconsistent administration of justice.

Codification will not:

- Prevent lawyers from obtaining relevant and necessary information in both civil and criminal cases.
- Provide the media with any unfair advantage in a defamation law suit.

1. Source of the Privilege

The journalists' privilege in this state is rooted in the First Amendment to the United States Constitution and in Article 1, Section 14 of the North Carolina Constitution. In *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972), the United States Supreme Court recognized a qualified privilege for reporters grounded in the First Amendment. In doing so, the Court stated "without some protection for seeking out the news, freedom of the press could be eviscerated." *See also Chappell v. Brunswick* Board of Education, 9 Med. L. Rptr. 1753 (N.C. Super. Ct. Brunswick Cty. 1983) (recognizing journalists' privilege under the U.S. and North Carolina Constitutions).

The privilege is afforded journalists as a way of ensuring that information flows to the people so that they may be fully informed on events that affect their lives and decisions made by their leaders for their benefit. Without the free flow of information, citizens will not be able to participate in the democracy.

It is important to recognize that journalists are at the center of current events. In covering the news of any community, they receive information that will often be the subject of a judicial proceeding. Without a qualified privilege, journalists become favored witnesses of civil attorneys who believe they can use journalists as a easy way to discover relevant information without undertaking the necessary initial effort.

Courts and commentators recognize five adverse effects that arise when journalists are forced to testify:

First, sources of information – both confidential and nonconfidential – express their reluctance to talk to journalists when there is a risk that those communications will be used in a judicial proceeding.

Second, journalists lose their neutral position in the eyes of the public when they are forced to testify for one litigant or another. They become "tools" of the state or defense.

Third, the litigant intrudes into the editorial process when he seeks to discover unpublished information. When journalists are deposed, they are subject to questions that go into their news judgments rather than the facts of a particular case, causing a significant chill to reporters engaged in the editorial process.

Fourth, there is a financial burden on news organizations that arises from unabridged discovery. The news organization loses the use of that reporter for the trial proceeding or deposition. This can be devastating for small news organizations. There is also a significant cost in legal resources to defend against multiple subpoenas.

Finally, discovery causes reporters to disclose the fruits of their labor. The information a journalist receives – published and unpublished – is the reporter's "stock and trade." Subpoenas that seek this information deprive the news organization of the benefits of their capital investment.

See 1997 "Agents of Discovery: A Report on the Incidence of Subpoenas Served on the News Media in 1997." The Reporters Committee for Freedom of the Press.

2. Journalists' Privilege Under Federal Law

The federal courts in North Carolina recognized a journalist's privilege for confidential and nonconfidential information. While the development of the journalists' privilege began by shielding journalists from the necessity of revealing confidential sources, it protects nonconfidential information as well. *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 951 F. Supp. 1211 (M.D.N.C. 1996). As the United

States District Court for the Western District of North Carolina has observed, "[t]he compelled production of a reporter's resource materials can constitute a significant intrusion into the newsgathering and editorial processes." *Miller v. Mecklenburg County*, 602 F. Supp. 675 (W.D.N.C. 1985). The privilege recognized by courts is qualified privilege. That means litigants can obtain the needed information if the interests of justice require the compelled discovery of that information. In all cases where a reporter asserts the privilege, there is a three -part test : (1) whether the information sought is relevant; (2) whether there is a compelling need for the information; and (3) whether the party seeking the information has exhausted other possible sources of the information before seeking to compel the material from the reporter. *Penland v. Long*, 922 F. Supp. 1080, 1084 (W.D.N.C. 1995); *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 24 Med. L. Rptr. 2431, 2432-22. *See Miller*, 602 F.Supp. at 679.

In *Miller*, the court also weighed the public's interest in having the press free to investigate stories without being compelled to disclose the sources for the information. It stated: "The public has a paramount interest in having a free flow of information, and this flow may be constricted when reporters are forced to disclose a confidential source or unpublished material received from that source." *Miller*, 602 F. Supp. at 679-80.

The United States Court of Appeals for the Fourth Circuit, the circuit in which North Carolina sits, has also adopted this three-part test to determine if information obtained by a reporter while gathering news can be compelled. *See LaRouche v. NBC*, 780 F.2d 1134 (4th Cir.), *cert. denied*, 479 U.S. 818, 107 S. Ct. 70, 93 L.Ed. 2d 34 (1986); *Church of Scientology Int'l v. Daniels*, 992 F.2d 1329 (4th Cir.), *cert. denied*, 510 U.S. 869, 114 S.Ct. 195, 126 L.Ed. 2d 153 (1993).

3. Journalists' Privilege Under State Law

North Carolina's courts have long recognized the journalists' privilege. In *Chappell v. Brunswick Board of Education*, 9 Med. L. Rptr. 1753 (N.C. Super. Ct. Brunswick Cty. 1983), for example, the court quashed the plaintiff's subpoena duces tecum commanding a reporter to appear with her notes, files and records for a deposition. The reporter had interviewed a Board of Education member to write an article about the non-renewal of the plaintiff's teaching contract. The court held that the U.S. and North Carolina Constitutions afford reporters a qualified privilege to refuse to testify or produce documents, regardless of whether or not the information is confidential. The court applied a three-part test, similar to that applied by the federal courts. Other North Carolina courts have also applied this test. *See, e.g., North Carolina v. Demery*, 23 Med. L. Rptr. 1958 (N.C. Super. Ct. Robeson Cty. 1995); *North Carolina v. Wallace*, 23 Med. L. Rptr. 1473 (N.C. Super. Ct. Mecklenburg Cty. 1995).

In *North Carolina v. Smith*, 13 Med. L. Rptr. 1940 (N.C. Super. Ct. Buncombe Cty. 1987) the court also quashed a subpoena based on the journalists' privilege. There, a reporter interviewed a former District Attorney for a story on theft of narcotics and the defendant in a criminal case sought the reporter's testimony. The court held that defendant had failed to overcome the federal and state constitutional privileges because the information sought, though relevant, was neither essential to defendant's case nor unobtainable elsewhere.

Similarly, in *North Carolina v. Wallace*, 23 Med. L. Rptr. 1473 (N.C. Super. Ct. Mecklenburg Cty. 1995) a defendant accused of ten murders sought to subpoena newspaper and broadcast reporters to determine if their sources were police officials. Defendant was seeking a change of venue, claiming that pretrial publicity had prejudiced prospective jurors and that police officials were the source of the adverse publicity. The court held that the defendant failed to satisfy the requirement that the information is highly relevant and essential because the reporters' testimony would be merely cumulative to evidence already presented.

Courts in many other North Carolina cases have recognized the journalists' privilege and relied upon it in quashing subpoenas served upon reporters and news organizations. *See, e.g., Locklear v. Waccamaw Siouan Development Ass'n*, 12 Med. L. Rptr. 2391 (N.C. Gen. Ct. 1986) (quashing subpoena directed to newspaper reporter in civil case for failure to demonstrate the information sought was not available from alternate sources); *North Carolina v. Hagaman*, 9 Med. L. Rptr. 2525 (N.C. Super. Ct. 1983) (quashing subpoena issued to reporter in murder case); *North Carolina v. Rogers*, 9 Med. L. Rptr. 1254 (N.C. Super. Ct. 1983) (quashing subpoena seeking testimony of reporter in criminal case).

Recently, one North Carolina court refused to recognize a qualified privilege of reporters to be free from compelled testimony, at least with respect to nonconfidential information from nonconfidential sources. *See In re Sarah Lynn Owens*, 496 S.E.2d 592 (N.C. Ct. App. 1998). The case, however, is contrary to the vast majority of state and federal cases, which have recognized the privilege under the state and federal constitutions, and it illustrates the need for a statutory privilege.

4. The Proposed Statutory Privilege Is Consistent With North Carolina Case Law

Under the proposed statutory privilege, journalists will be protected from compelled disclosure of confidential informants and confidential information obtained by a journalist while actively gathering or compiling news.

In addition, a qualified privilege will apply to nonconfidential information obtained or prepared by journalists. Under the qualified privilege, a journalist will

be compelled to disclose information if the person seeking the information establishes that the information: (a) is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought; (b) cannot be obtained from alternate sources; and (c) is critical or necessary to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought. Also, courts must hold a hearing and include clear and specific findings under the three-part test before issuing an order to compel testimony or production. The qualified privilege as proposed and the three-part test to overcome it is consistent with federal and state court cases in North Carolina.

5. Conclusion

If the statutory journalists' privilege is enacted, it will bring North Carolina into the majority of states, which have passed shield laws. The majority of shield laws that have been passed have similar or broader provisions to protect information obtained by journalists while gathering news from compelled disclosure.

A statutory privilege should help to minimize the number of subpoenas issued to journalists and allow them to concentrate on gathering and reporting the news. In addition, codification of the journalists' privilege will diminish the threat to sources of potentially newsworthy information of having their identities and information later disclosed in a legal proceeding. The result will be to preserve an independent press and the free flow of information to the citizens of North Carolina.

LIMITED STATUTORY PROTECTION AGAINST SUBPONEAS TO NEWS MEDIA

Purpose: The NCPA shield legislation provides qualified protection for the media's newsgathering information. The bill makes the media a secondary source—rather than a primary source—for those seeking information for use in court. The bill is designed to diminish the burden of subpoenas on the news media by 1) codifying the media's constitutional right under the First Amendment and the NC Constitution against being forced to testify concerning information gathered for distribution to readers and viewers, and 2) clarifying the rules by which people might acquire this information. This is not a special interest bill, but will protect the public's right to information it obtains through the news media.

What the law has been: For 30 years, judge-made law in NC protected the media's right against being forced to testify, unless a party shows the following in court:

A. The information is relevant and material;
B. There is compelling need for the information; and
C. The information cannot be obtained from other sources

What recently happened to this protection: In a February 1998 ruling that is at odds with law in 47 other states, the NC Court of Appeals threatens to end the news media's protection from being forced to testify.

Yet the federal courts continue to recognize the media's right to be protected against forced disclosure of their newsgathering information: The settled law of the federal circuit in which NC sits is that people may not subpoena the news media for information unless the three-part test (outlined above) is met.

What the proposed statute does: This qualified protection against subpoenas bill would bring NC into conformity with the vast majority of other states (30 of which have a virtually identical statute) and the federal courts in this circuit. Under this bill, people can obtain newsgathering information in some instances by meeting the three—part test that has been the law in NC for 30 years.

TALKING POINTS:

1. Senate Bill 1009 provides qualified protection for journalists' newsgathering information. The bill makes journalists a secondary source – rather than a primary source – for those seeking information for use in court. The bill is designed to diminish the burden of subpoenas on the news media and, in turn, ensure the free flow of information to the public

2. Under this bill, people can obtain newsgathering information from journalists by showing that the information is highly relevant; that the information cannot reasonably be obtained from alternative sources; and that the information is essential to proving the claim, charge, or defense made by the party seeking the information.

3. This bill makes North Carolina state law consistent with the law protecting reporters from subpoenas in the North Carolina federal courts and with the law that exists in 47 states. Thirty states, the District of Columbia, and Guam have statutes that protect journalists' information.

4. This bill would simply restore the protection afforded journalists' information by North Carolina courts for 30 years (until a February 1998 decision by the NC Court of Appeals).

Gene Price

Protect the wrongdoers?

Trust is the hallmark of the reporter. Without it, nothing he or she produces, no matter how well written, is of value.



And trust goes far deeper than the final product.

It is the genesis of the reporter's ability to get the facts that go into the final story — the day's news.

I have spent more than 50 years in the trenches of journalism. It has been my privilege to break some stories of statewide and national interest.

A key element in virtually all the "big" stories was that someone felt comfortable in sharing with me — in confidence — some basic background information.

Providers of that information have not been sinister, self-serving or vindictive tipsters lurking in dark alleys.

To the contrary, in years past they have ranged all the way up to the highest public officeholder in the state — and to the state's highest law enforcement official.

They shared with me information they could not have provided without complete confidence that they would never be identified as my sources.

Their sole motivation for sharing the information was the public interest. And because I was able to break the stories, the public interest was, indeed, served.

These experiences from the past came to mind recently as I read of the efforts of State Sen. David Hoyle to provide North Carolina's journalists, within some reasonable limits, the legal right to protect their confidential news sources.

Federal courts across the land have respected that right. And it is provided by law in 48 states. In our own state, for decades, it was the rule if not the written law — until last year.

A three-judge appellate court panel ruled that there could be no such protection.

Sen. Hoyle has introduced a bill that would restore that right, with some qualifications. The court could require revelation of sources and information if: 1) the information is relevant and material; 2) there is a compelling need for the information; and 3) the information cannot be obtained from other sources.

There apparently is reticence on the part of some prosecutors to see such a law passed. Perhaps some like the idea of being able to possibly rely more on the efforts and skills of investigative reporters than on their own resources.

> There might be cases where that is justified. But the exceptions appear to speak to such situations.
>
> And prosecutors might also reflect on what might also happen in the absence of a law protecting informants. The high courts for years have come down on the side of accused criminals. Could absence of a shield law lead to denying CrimeStoppers around the country the opportunity to promise informants that *their* identities will be protected?

The silencing of sources of information would have a disastrous effect on law enforcement, just as it would have on investigative journalism.

Without some element of protection, no longer can even the most credible people share confidential information with any conviction that their identities will not be revealed.

Without the confidentiality shield law, the protection against exposure is shifted to those who, behind the scenes, are stealing, accepting pay-offs, falsifying records and engaging in all manner of corruption.

The real issue in Sen. Hoye's bill is: For whom will protection be provided — the lawbreaker or the law-abiding citizen?

Goldsboro News-Argus

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ESTABLISHED 1885

April 16, 1999

Senator Marc Basnight
Room 2007
Legislative Building
Raleigh, NC 27601

Dear Marc:

I am enclosing for your interest a copy of my page one column which will appear Monday, April 19. Hopefully, it states my case for Senator Hoyle's "shield law" bill.

Several years ago, a governor and an attorney general — both personal friends of yours and mine — gave me in confidence a full SBI report on terrible things that had been going on at a public institution.

No criminal indictments were forthcoming, hence, the SBI report never could be released *legally*. But both the governor and the AG felt strongly that the information needed to be made public and knew they could trust me to get the story printed and on the wire services and still protect them.

Strict confidentiality also was essential in stories I developed involving skulduggery on the part of three judges — one of whom was kicked out and the other two censured by the Supreme Court. And in revealing a series of embezzlements on the part of a Goldsboro tax collector.

I feel Senator Hoyle's bill is more important than even some of my colleagues in the "media" realize.

Sincerely,

Gene Price

GP:ll
Enc.

cc: John Kerr, Phil Baddour, Senator Hoyle, Senator Tony Rand, Senator Beverely Pardue

(over)

This newspaper is dedicated to being an indispensable source of information and entertainment in our community while promoting the spirit of freedom.

A Freedom Newspaper

Vernon L. DeBolt / Publisher
Billy Moore / Advertising Director
Frances Jones / Circulation Director
Richard Wagner / Editor
Cynthia Coleman / Business Director
Larry Powell / Production Director

Editorial

True or false: North Carolina needs shield law

Put away your cup of coffee. Pick up your pencil. Time for a pop quiz.

Answer the following questions. True or false:

1. T ___ F ___ We live in a perfect world.
2. T ___ F ___ Government officials can always be counted on to do the right thing — and you would bet your life on it.
3. T ___ F ___ You or your children have never been wronged at work, school or in your personal business dealings.
4. T ___ F ___ Your local, state and federal governments are run efficiently and never waste taxpayers' money.
5. T ___ F ___ You don't pay enough taxes, and you would like to pay more.
6. T ___ F ___ There never was a Holocaust.
7. T ___ F ___ Police never abuse their power - and you'd bet your life on it.
8. T ___ F ___ Richard Nixon was a fine, upstanding president.
9. T ___ F ___ Bill Clinton never lies.
10. T ___ F ___ You know of wrongdoing and you have proof of it — but you don't say anything because you don't want to lose your job or attract attention to yourself.

Time's up.

How did you do? If you marked the first nine questions "true", then you lead a blessed life, indeed. If you marked the first nine questions "false", reality has left its mark on you. But, if you marked No. 10 "true", we would like to help you. Maybe not right now, though.

Maybe never.

It all depends on what the North Carolina General Assembly does this week. The North Carolina Press Association has embarked on a major effort in the Assembly to have legislators pass a "shield law", which would provide protection for journalists in their newsgathering activities. Such a law would enable the press — the only watchdog free of government control —

Without the law, however, journalists could be hauled into court at anytime and by anyone in government who wants to know what the media knows — and who gave us the information. Until recently, courts in North Carolina had protected journalists from such government intrusion. But a recent decision by an appeals court and inaction by the State Supreme Court have left the legislative route the only alternative for the media.

Journalists across America are jailed frequently because they refuse to divulge their information or their sources. They don't withhold their notes or refuse to divulge a source's identity because they seek fame or martyrdom. They do it for the sake of freedom, for the public.

The N.C. Senate Judiciary Committee and the House Judiciary Committee each are considering separate bills that would protect journalists' right to practice their trade. Monday is D-Day. The committees are expected to make their decisions then. The bills will either die, or they will be passed to the House and Senate floors for final votes.

If you believe this is a perfect world, we hope you enjoy your coffee and pray you will be allowed to continue to live a long, idyllic life. If you feel otherwise, then we suggest you call or e-mail your legislator.

Otherwise, don't expect journalists to go to bat for you should you ever be wronged — or to be willing to spend time in jail to protect your rights and confidentiality.

Contact your legislators

Sen. Ed Warren, D-9th; Phone: (919) 733-5953 (W), (252) 756-2671 (H); E-mail: Edw@ms.ncga.state.nc.us

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Rep. Jerry Braswell, D-97th; Phone: (919) 715-3001 (W), (919) 731-2750; E-mail: Jerrybr@ms.ncga.state.nc.us

Rep. Russell Tucker, D-10th; Phone: (919) 715-3015 (W), (252) 568-3295 (H); E-mail: Russellt@ms.ncga.state.nc.us

Last year, when UNC Police Lt. Ed Swain was in a legal battle with the university over his ticketing of a trustee's daughter, the state sought to subpoena a Chapel Hill News reporter to testify against Swain. The Attorney General's Office reasoned that the reporter could verify UNC's assertion that Swain had met with reporters while on police duty. He had been fired for claiming work time and pay for the period of time he had spent at The Chapel Hill News office. The offense was a patently technical infraction concocted by Swain's bosses to obscure the real reason for his firing – the officer's audacity in ticketing a trustee's daughter for underage drinking at a UNC football game, and then complaining to the press that UNC tried to cover up the ticket.

The newspaper talked the state attorneys out of subpoenaing the reporter. We were able to make the case that the Constitution, federal and state, protects journalists from being forced to testify in court about information obtained in the course of routine news-gathering.

Since then, that protection has been dangerously eroded by the state Court of Appeals, which last year reversed long-standing judicial policy and ruled that reporters could be compelled to turn over their notes to prosecutors and testify in court about sources for their stories. The decision has been appealed to the N.C. Supreme Court, which so far has not issued an opinion.

Alarmed at the loss of protection, the state's newspapers and television stations have asked the General Assembly to enact a "shield law" that would protect reporters from being forced to testify about their stories and sources, except under specified conditions. The bill is to be considered this week in the state Senate and House.

It might be asked: Why should journalists have such a special legal privilege, when ordinary citizens can be compelled to testify when they've seen a crime committed? After all, without such subpoena power to make unwilling witnesses testify, law enforcement authorities would be hampered in their ability to convict criminals and defense attorneys in defending innocent clients.

The simple answer is that reporters are not ordinary citizens when they're on the job. They are professionals who gather information in the course of their work, in order to publish news about the communities they cover. If reporters were not protected by a legal privilege in court, prosecutors and defense attorneys could use the media as an investigative arm, summoning reporters at will to disclose their notes and sources of information used in reporting a story.

Again, what's wrong with that? The potential is to dry up the flow of information, especially about sensitive issues, to reporters and by extension to the community. Imagine how willing a person who possessed confidential information would be to talk to a reporter if

in court, would be denied a free flow of information about the workings of their government. If whistleblowers in the Swain incident hadn't felt they could trust reporters to protect their confidence, you can be sure that the trustee ticketing episode never would have seen the light of day.

The proposed shield law would not be a blanket protection. Prosecutors still could call reporters to testify if they could prove that the information couldn't be obtained any other way and was essential to their case. Thirty other states already have such laws, and federal courts, including those in North Carolina, recognize the media's right to be protected against forced disclosure of newsgathering information.

The Senate and House should act expeditiously to ensure such basic guarantees in North Carolina's courts as well.

Flow of information essential to freedom

The Daily News, Jacksonville, N.C.; April 21, 1999

Freedom of the press isn't reserved for those who ply journalism as a trade. It isn't a right assigned exclusively to publishers and editors, reporters and broadcasters.

The framers of the state and federal constitutions had a much greater purpose in mind when they gave free press and free speech prominence in those documents. They were concerned with the rights of all people and the future of democracy. They understood that unregulated information was essential to a free society.

The media actually can operate without freedom; it just doesn't operate very well or serve any legitimate purpose. For proof, look at the state-controlled machines that churn out propaganda for autocracies worldwide.

Our approach to journalism is remarkably different. It isn't always tidy, and it certainly isn't always fair, but a free press has served this nation well for more than 200 years.

[redacted]mericans frequently object to the [redacted]a's conduct, with good reason, but [redacted] still put a lot of faith in the press's ability to gather the news. They recognize that the freedom of the press actually is their freedom.

When properly fulfilling their watchdog roles, the news media provide a line of defense against various forms of government abuse. If the press isn't allowed to operate outside the realm of government, all forms of liberty are placed in jeopardy.

That is why the nation's Founding Fathers included a guarantee of press freedom in the First Amendment. It is reason Article 1, Section 14, of the N.C. Constitution reads, "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained...."

An important battle to maintain the free flow of information is under way in the General Assembly. Both the state House and Senate are considering legislation that would allow journalists to maintain their integrity and objectivity when dealing with confidential information.

Under a bill introduced by Sen. David Hoyle, D-Gaston — and co-sponsored by two area legislators, Sen. Beverly Per[redacted] D-Craven; and Sen. Patrick Ballen[redacted] R-New Hanover — reporters could [redacted] be forced to testify in court cases under certain conditions.

To force a bona fide journalist to testify or disclose information, attorneys would have to show:

- The information is relevant and material to the case.
- There is a compelling need for the information.
- The information cannot be obtained from other sources.

Those straightforward requirements for overcoming what traditionally has been honored as a reporter's privilege do not represent a threat to the equilibrium between government and the so-called fourth estate.

Depending on the resolutions of ongoing court cases, however, failure to enact the guidelines could cut off the information that a free society requires.

Uncovering government malfeasance and delving into the complexities of many important news stories often require use of confidential sources and information. It's a natural part of an important calling. If they are to maintain any chance of success, reporters must be able to approach their work with reasonable protection from the whims of a vindictive or just plain lazy lawyer in a future court case.

Actually, the greatest danger isn't to journalists. The people most at risk would be the ones who are brave enough to step forward to expose wrongdoing. When cases go to court, they will be the real targets; reporters will only be obstacles.

Opponents of this legislation would like to project it as a "press bill." The same arguments arise when efforts are made to strengthen open-government laws.

It's really a "people's bill." The legislation offers special protection not to a profession but to an ideal. It attaches the same importance to the free flow of information as the authors of our constitutions did.

This issue should be decided by the courts, but various judicial decisions have eroded our constitutional protections in recent years. Taking nothing for granted, our legislators should stand in defense of freedom of the press in the way their forebears once did.

[redacted] Wednesday, April 21, 1999 10:31:36 AM
NC Bureau Item

From: Patrick Holmes

Subject: Shield law editorial

To: NC Bureau

BURLINGTON

Following is Don Bolden's editorial in support of shield law legislation, which ran in the Times-News on Monday.

Shield law will make
Freedom more secure

Currently there are two cases under appeal in North Carolina regarding freedom of the press issues, and the outcome could have a major impact on the future flow of information through news channels to the reading public.
In one of the cases, a Wake County judge ordered a television reporter to testify regarding a confidential source, and in the other, a reporter for the Raleigh News & Observer was ordered to produce his notes regarding an interview with a defendant charged in a murder and sexual assault case.
Both those cases have proceeded to the North Carolina Supreme Court which has yet to rule on either.
As a result of these cases, legislation has been introduced in the North Carolina General Assembly to shield journalists from revealing their sources or from testifying in court,
Two bills have been introduced _ one by Sen. David Hoyle, D-Gaston, and the other oby Rep. George Miller, D-Durham. In giving a reason for his bill, Mr. Miller said ``The role of the media is a valuable one. He said his act would give ``very minimal'' protection for journalists.
Under Mr. Hoyle's bill, a journalist would not be required to testify about confidential or non-confidential information unless attorneys could show in court that the information is relevant and material, that there is a compelling need for that information and that the information could not be obtained form other sources.
Mr. Miller's bill goes a step further in that it would offer a blanket shield against requiring a journalist to give the identify of a confidential informant or any information obtained from a confidential source.
John Bussian, an attorney who is lobbyist for the North Carolina Press Association, urged approval of a shield law in view of the two cases currently under appeal. He said the courts in North Carolina have always recognized that the First Amendment and the free press clause in the N. C. constitution give protection to the press from being forced to testify in court in all but the rarest cases.There are those in the legal community who oppose any shield laws for journalists, believing that they should be forced to testify, contending that any valuable information they have should be made available to the courts.
So what's the big deal here? Is a shield law just a way for journalists to avoid court procedures? Hardly. A shield law is not a law for journalists but for the general public. Such a law will assure that the flow of information will continue, that threats from the courts will not stifle the use of confidential informants and confidential materials, and that basic freedom of the press will remain intact. It is the reader of the newspaper who benefits from the information that the reporter uncovers, and should that information be choked off, it is the reader of the newspaper whose freedom suffers.
It is obvious from the two cases in point that North Carolina needs a shield law. And now is the time to approve it. Then what has been practice in North Carolina until these two cases arose will become law, and one of our basic freedoms will be a bit more secure.

[redacted] Wednesday, April 21, 1999 2:17:29 PM
NC Bureau Item

From: John Pea

Subject: Gazette edit on shield law

To: NC Bureau

Gaston Gazette

Press protection bill good for everyone

Two state lawmakers, including Sen. David Hoyle, D-Gaston, have introduced important bills in the North Carolina General Assembly to protect reporters from revealing their sources and testifying in court.

Hoyle and Rep. George Miller, D-Durham, filed similar "shield law" bills in their respective chambers.

Under Hoyle's bill, a journalist would not be required to testify about confidential or non-confidential information unless attorneys could show in court that the information is:

l Relevant and material to the case

l Compelling enough to be admitted

l Unable to be obtained from other sources

Miller's bill differs from Hoyle's. It would offer a blanket shield against requiring a journalist to disclose the identity of a confidential informant or any information obtained from a confidential source.

It's important to note that these laws protect more than journalists. In essence, they protect the public's right to know.

Important information might never be revealed in the media if sources fear they'll be exposed in court. In many cases, events are brought to light that the public needs to know about -- information they won't get from government.

These lawmakers are to be congratulated for their bravery in taking this stance. They are acting in the best interests of all North Carolina residents.

Hoyle and Miller introduced the bills at the request of the N.C. Press Association.

Two court cases prompted the bill:

-- The first occurred in 1997 in Wake County, when Superior Court Judge Robert L. Farmer ordered television reporter Sarah Owens to testify regarding a confidential source. The N.C. Court of Appeals upheld the order, which is now on appeal before the N.C. Supreme Court.

-- The second occurred in 1998 in Durham County, when Superior Court Judge Orlando Hudson ordered Andrew Curliss, a reporter for the Raleigh News & Observer, to produce his notes regarding an interview with a defendant charged with the murder and sexual assault of a 2-year-old. The newspaper appealed that case directly to the N.C. Supreme Court.

[redacted] Unsent Message

From: Elliott Potter

Subject: Re: Shield law edit

To: Elliott Potter

Cc:

From the Sun-Journal of New Bern:

It can be argued that the media does in fact push too far and stay too long in reporting stories the public believes cross the line from "need to know" to invasion of privacy.

A case can be made to support that conclusion.

Nevertheless, it's the particular media outlet that should then be prepared to answer to a disapproving public, which, by the way, oftentimes craves the coverage.

The public cannot either approve or disapprove if journalists are restricted, in any way, of gathering and disseminating information. What's more, editors, broadcasters and reporters must be free to gather, print and broadcast this information without fear of retribution involving these professionals or their sources.

"Congress shall make no law ... ."

Sound familiar? The First Amendment to the U.S. Constitution is written not to be misunderstood. The public's right to know is paramount in maintaining a free society and a representative government.

It's up to voters and taxpayers to decide when government officials, who often attempt to restrict the flow of information affecting the lives of Americans, have overstepped their bounds.

State lawmakers who strongly believe in this ideal have presented a "shield law" bill that would, in effect, permit journalists to work with confidential sources sans any fear of retribution from our courts system.

The state House and Senate are considering the legislation.

Two state cases, currently under appeal, speak to the need for a "shield law" - introduced by Sen. David Hoyle, D-Gaston and co-sponsored by Sen. Beverly Perdue, D-Craven, and Sen. Patrick Ballentine, R-New Hanover. One of the aforementioned cases involves a reporter for the Raleigh News and Observer who was ordered to hand over notes regarding an interview with a defendant charged with the sexual assault and murder of a 2-year-old. The other involves a television reporter who was ordered to testify regarding a confidential source.

Each case has reached the state Supreme Court. We are awaiting a decision.

These types of cases not only serve to impede a journalist in regard to his quest for information. They effectively choke the news pipeline which feeds the general public.

The new law would, before forcing a journalist to testify, place the burden on attorneys to show the information is relevant to the case, there is a compelling need for the information, and the information cannot be obtained from other sources.

Clear, concise and succinct.

Press freedoms have not in recent years been strengthened by the courts. They have, unfortunately, been weakened.

That's why a shield law is essential to maintaining the freedom we have enjoyed, and from which we have prospered, for 200 years.

From the *Rocky Mount Telegram*, April 24, 1999

A bill now before the General Assembly would codify a key protection for the free press, and deserves both prompt passage by our senators and representatives and the governor's approval. Informally called a "shield law," the bill would generally prevent journalists from being forced to testify or provide other forms of evidence in legal proceedings. Further, it requires that efforts to compel a journalist's cooperation can come only after a hearing has been held.

While not a matter that draws much public attention, the prospect of having to testify in a civil or criminal case or provide notes, photographs, videotape or other items is a grave concern, and even a threat, to a free press. It cuts to the very matter of for whom the press works. The answer is not for law-enforcement agencies, the district attorney or similar public officials who prosecute criminal cases. It is also certainly not for lawyers, insurance agencies and the like who are involved in many civil cases.

The media serve the public as unbiased (when the job is done properly) recorders of the happenings that affect all our lives. To do so requires that those we cover understand that we are not gathering information with the intent of routinely, or even infrequently, providing it to third parties who would oppose them, do them harm or the like. Knowing that a shield law is in place only strengthens the role of the press that was established more than 200 years ago in the opening words of the Bill of Rights.

Yes, there have already been some steps toward ensuring that the press has such protection. Previous court decisions have put some restrictions on compelling journalists to provide evidence. But in a given case today, that is a hit-or-miss sort of security, hanging on the philosophy of the judge.

The bill also isn't a carte blanche for journalists. It still permits a party to force testimony if three specified conditions are met. But before that can be invoked, the bill would require the party involved to thoroughly look elsewhere to see if he can obtain the information from another source.

The bill is now before the Senate Judiciary I Committee. Hearings will have to be held on it, of course. Forces who would oppose a strong and free press, most notably, we suspect, those who have been caught in the media spotlight for some unsavory act they have committed, will line up against the bill. They can and should have their say, but we can see no reason why senators should not move forward with the proposal. With the deadline approaching for bills to be sent to the House, this proposal should get quick votes of approval in both the Senate committee and on the chamber's floor. The House should concur as quickly, and the plan should soon be sent to Gov. Jim Hunt for his signature.

Editorial from *The Dispatch*, Lexington

Legislation that is very important, especially to readers of all newspapers in North Carolina, is to be voted on in a state Senate committee Monday afternoon. Assuming it passes, it probably will be sent to the full Senate for action.

A companion measure, with a little different wording, is in a state House committee that held a hearing on the bill Friday, and will probably vote on it next week.

The legislation would allow journalists to keep secret the identity of confidential sources in several circumstances.

That means if you had information of wrongdoing in your government, for instance, but couldn't expose yourself as the whistleblower, you would be protected when the newspaper reporter pledged confidentiality to you.

That's the way it is in 47 other states.

It always has been assumed that you and the reporter had that protection in North Carolina too. After all, the state constitution reads: "Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained."

Judges have consistently ruled over the years that journalists couldn't be forced to testify in court unless the information is relevant and material, there is a compelling need for the information and the information cannot be obtained from other sources. It has come to be known in legal circles as the three-part test.

Federal courts also recognize the right of journalists and their sources to be protected under similar circumstances.

But two cases are now before the N.C. Supreme Court that could change things considerably. A television reporter in Wake County was ordered by a Superior Court judge to reveal the identity of a confidential source n 1997. A three-judge N.C. Court of Appeals panel ruled against the reporter and the case is on appeal.

A year later, in Durham County, a newspaper reporter was ordered by a Superior Court judge to produce all of his notes regarding a jailhouse interview with a defendant.

Prosecutors want to use an impartial reporter as an investigator for the state instead of doing their own work. That went to the Supreme Court on direct appeal.

The bills filed by Sen. David Hoyle, D-Gaston, and Rep. George Miller, D-Durham, protect your right to continue to know information that you expect to learn through the news media.

If that protection ceases to exist in this state, it will have a chilling effect on newsgathering. Sources will be reluctant to do the honorable thing and give journalists information about wrongdoing. He or she would know the journalist couldn't guarantee secrecy because the courts could legally demand the identity be revealed.

Journalists would, of course, have to testify about any crime they witnessed – just as every citizen does. But if sources can't be protected, you will lose and lawbreakers will win.

Herald-Sun, Durham

Balkans will end. We can only hope the end will be more fortuitous than the beginning.

MEDIA SHIELD LAW

North Carolina needs one

Should reporters be forced to testify in criminal or civil proceedings concerning information they have gathered for news stories? Federal courts have held that reporters can only be so compelled when the information meets very specific qualifications and is crucial to the case. For 30 years, North Carolina courts have followed similar practice.

Now this sound, respected practice is being challenged. In a February 1998 decision, the N.C. Court of Appeals ruled that reporters do not have a qualified privilege to refuse to testify. The court's ruling came when it upheld a lower court's contempt citation against reporter Sarah Lynn Owens. Owens refused to testify during a criminal proceeding about nonconfidential information she had gathered for a television news story about a Wake County murder case.

Owens would have received far different treatment under a bill now in the Legislature. A measure now before the Judiciary Committee of the N.C. Senate would codify the practice that courts have long honored, and clarify when reporters must testify in a court proceeding. The bill, sponsored by Sen. David Hoyle, D-Gaston, succinctly puts forth three situations in which testimony may be compelled.

Under Hoyle's proposal, anyone who seeks to compel a reporter to testify or produce information must illustrate that the information is highly relevant to the legal proceeding. Furthermore, those seeking the information must demonstrate that it cannot be obtained from other sources and that it is essential to a claim or to the defense of the person on whose behalf the testimony is sought.

Besides codifying what courts have done for years, Hoyle's bill is also a reasonable compromise. It acknowledges that there are situations when the information a reporter has gathered may be important to getting at the truth and seeing that the law and justice are served.

But it also protects reporters by acknowledging that they ought not be used as primary sources of information in criminal or civil investigations. Reporters play the role of watchdog. If courts and lawyers start seeing them as sources of information, then the press is playing a law enforcement role that the Constitution never intended. Worse, this quasi-investigative status would open the whole news-gathering enterprise to subpoenas and other legal actions, chilling the entire process of newsgathering.

The Constitution intended that the press have considerable latitude to get access to information. Hoyle's bill allows today's media to fulfill their constitutional role unimpeded. David Hoyle's bill ought to be passed in this legislative session.

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GEORGE WILL

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Editorial from *The News Reporter*, Whiteville

North Carolina journalists, and especially this newspaper, rarely use anonymous sources, but when a story is so compelling that sources can only be used on the condition of anonymity, it is important that these sources be protected. North Carolina does not have a "shield law" that protects journalists from revealing their sources in court. Many journalists would rather serve time in jail and their newspapers suffer egregious fines for contempt than reveal a confidential source. Newspapers are often the only institutions to which people can turn to reveal wrongdoing. Journalists shouldn't have to do their jobs as the Fourth Estate – the "branch" that acts as a watchdog over the others – under the threat of incarceration. Time and time again, the public good is served because someone had the courage to go to a newspaper and tell the truth. The real danger in not having a shield law is that important sources won't come forward because they fear losing their jobs, or worse.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1048

Short Title: Amend Rule 4/Manner of Service. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(l) Process -- Notice of manner of service. -- When service of process is by means other than personal delivery, notice of the manner of service shall be filed with the court within 10 days after the date of service."

Section 2. This act becomes effective October 1, 1999, and applies to actions commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1056

Short Title: Limitation for Prod. Liability Actions. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50(6) is repealed.

Section 2. Article 5 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-46.5. Fifteen years.**

No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 15 years after the date of initial purchase for use or consumption."

Section 3. This act becomes effective October 1, 1999, and applies to causes of action that accrue on or after that date.

HOUSE BILL 1056:
Limitation for Prod. Liability Actions

BILL ANALYSIS

Committee: House Judiciary I
Date: April 22, 1999
Version: 1st Edition

Introduced by: Rep. Miller
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 1056 changes the limitation within which a product liability case may be brought from six years to fifteen years after the date of purchase. The act is effective October 1, 1999 and applies to causes of action that accrue on or after that date.***

HOUSE JUDICIARY I COMMITTEE

1999-2000 SESSION

MINUTES

April 27, 199 – June 10, 1999

HOUSE JUDICIARY I COMMITTEE

April 27, 1999

Agenda

House Bill 920 – Vehicular Injury to Pregnant Woman
Representative Starnes

House Bill 1056 – Limitation for Product Liability Action
Representative Miller

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

House Bill 1231 – Safe Storage of Firearms
Representative Kinney

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 27, 1999
10:00 a.m.
Minutes

The House Judiciary I Committee met on Tuesday, April 27, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Cunningham, Ellis, Gardner, Gray, Insko, Miller, Moore and Nesbitt. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney noted that a committee substitute for **House Bill 1245, AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE AND TO REQUIRE SEX OFFENDER REGISTRATION FOR CONVICTION OF THAT OFFENSE**, (Attachment II), was adopted and discussed during the April 23, 1999 meeting of the committee. In the absence of a quorum, no vote was taken on the bill.

Representative Clary moved that the committee substitute be given a favorable report and that the original bill be given an unfavorable report. The motion carried, (Attachment III).

Representative Kinney was recognized to explain **House Bill 1231, AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS**, (Attachment IV). Representative Kinney distributed a proposed committee substitute, (Attachment V).

Representative Nesbitt moved adoption of the committee substitute. The motion carried.

Explanation of the bill may be found in the summary prepared by Ms. Susan Hayes, Committee Counsel, (Attachment VI)

Ms. Hayes was recognized for explanation of the committee substitute. She reviewed current law (see summary) and noted changes made by the committee substitute. The requirement that the person reside in the same premises as a minor and the requirement stating that a person leave a firearm in the condition that it can be discharged were removed in the committee substitute. Further explanation is included in the summary.

Mr. George Reid, North Carolina Council of Churches, spoke in support of the bill.

Ms. Henri McClees, McClees Consulting, spoke in opposition to the bill. She distributed information to the members of the committee, (Attachment VII)

Mr. Ben Miles, Jr., Grass Roots, NC, spoke in opposition to the bill.

Representative Miller spoke in rebuttal to Mr. Miles' comment that the legislation would kill children.

Mr. Tom Bennett, Executive Director, North Carolina Child Fatality Task Force, spoke in support of the bill.

Committee discussion followed.

Mr. Jack Cozort, North Carolinians Against Gun Violence, responded to questions.

Representative Cunningham spoke in support of the bill.

Additional discussion followed. No action was taken on the bill.

Representative Nesbitt was recognized to explain **House Bill 1194, AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO RECORD A TELEPHONE CONVERSATION WITHOUT THE CONSENT OF ALL PARTIES TO THE CONVERSATION,** (Attachment VIII). He said that the intent of the bill is to require that all parties involved must consent to record a conversation. He said that he planned to remove oral communication from the bill

Ms. Katherine Smith, North Carolina Victim's Network, spoke in opposition to the bill.

Mr. Eddie Caldwell, NC Law Enforcement Officers Association/NC Sheriff's Association, stated that the organizations he represented were opposed to the bill unless an amendment would be adopted to exclude law enforcement officers and agencies in the performance of their official duties.

Mr. Brian Beatty, Office of the Attorney General, stated similar concerns as those offered by Mr. Caldwell.

Mr. Charles Wilkins, North Carolina Association of Chiefs of Police, also spoke in opposition to the bill unless law enforcement officials performing official duties could be excluded.

The bill was removed from the agenda.

Representative Miller was recognized for additional comment on **House Bill 1048, AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY**, (Attachment X). The bill was discussed during the April 20, 1999,10:00 a. m., and the April 26, 1999 meetings of the committee. During the April 26 discussion, Representative Miller had stated that he was working on new language for consideration, but stated at this meeting that it was his intent to move forward with the original language. He moved for a favorable report. The motion carried, (Attachment XI).

The meeting was adjourned.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 27, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Howard Unger	NC Chamber
BEN MILES, JR	GRASS ROOTS, NC
Mike Cawvant	GRNC
Henri McClees	McClees Consulting, Inc
Richard Westbrook	UTU
Michael A. Copeland	GRNC
Mike Concannon	Grass Roots N.C.
Alice Garland	Electricities
Ruth Sappie	NCDOT
John Williamson	NCDOT
Stella Boswell	NCATL
Chuck Cooper	NCATL
Tom A Lewis	Mayo Mullen
Nancy Thompson	NCCBI
PERRI MORGAN	NFIB
	NCAFL
	NFOS
Thomas Vance Bennett	NCCFTF
	NCLM
Mike Robertson	SBI
Bryan Beatty	DOJ
Tom KENT	American Institute of Architects
	NCHBA
Jeff Lipe	Bayer
	Glaxo Wellcome Inc.
	—
	WCSR
	NCCCC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCAGen Valve
[signature]	"
[signature] DENNIS PATTERSON	AP
Eddie Caldwell	NC Law Enf Off Assn / NC Sheriffs Assn
Charles P. Wilkins	NC Chiefs of Police

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1245
Proposed Committee Substitute H1245-PCS2327-SA

Short Title: 3rd Degree Sex Offense. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL OFFENSE AND TO REQUIRE SEX OFFENDER REGISTRATION FOR CONVICTION OF THAT OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Third-degree sexual offense.**

(a) A person is guilty of a sexual offense in the third degree if the person either:

(1) By force and against the will of the other person takes or attempts to take any immoral, improper, or indecent liberties with any person of either sex 16 years of age or older for the purpose of arousing or gratifying sexual desire; or

(2) By force and against the will of the other person commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any person of either sex 16 years of age or older.

(b) Third-degree forcible sexual offense is a Class F felony."

Section 2. G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (third-degree sexual offense), G.S. 14-27.6

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

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

ATTACHMENT III

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1245 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIME OF THIRD-DEGREE SEXUAL 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 .)~~

☐ 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 1231

Short Title: Safe Storage of Firearms. (Public)

Sponsors: Representative Kinney.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner ~~that~~ in which the person knew or should have known that ~~an unsupervised~~ a minor would be able to gain access to the ~~firearm,~~ firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the ~~minor and the minor:~~ minor.

~~(1) Possesses it in violation of G.S. 14-269.2(b);~~

~~(2) Exhibits it in a public place in a careless, angry, or threatening manner;~~

~~(3) Causes personal injury or death with it not in self-defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class I felony if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor uses the firearm to cause personal injury or death, not in self-defense.

(a2) Subsections (a) and (a1) shall not apply if the firearm is kept in a locked box or container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(c1) If any minor is unintentionally shot by another family member, no arrest shall be made pursuant to this section prior to seven days after the date of the shooting.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

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 1231
Proposed Committee Substitute H1231-PCS1248-SA

Short Title: Safe Storage of Firearms. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor,~~ owns or possesses a firearm, and stores or leaves the firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b);

(2) Exhibits it in a public place in a careless, angry, or threatening manner;

(3) Causes personal injury or death with it not in self defense; or

(4) Uses it in the commission of a crime.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1231:
Safe Storage of Firearms

BILL ANALYSIS

Committee: House Judiciary I
Date: April 22, 1999
Version: 1st Edition

Introduced by: Rep. Kinney
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: House Bill 1231 amends the law regarding storage of firearms to protect minors.

CURRENT LAW: Current law provides a Class 1 misdemeanor for any person who resides in the same premises as a minor that stores or leaves a firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm without parental permission AND the minor either: (1) possesses it on educational property; (2) exhibits it in a public place in a careless, angry, or threatening manner; (3) causes personal injury or death with it not in self defense; or (4) uses it in commission of a crime.

BILL ANALYSIS: House Bill 1231 amends G.S. 14-315.1 to provide a Class 1 misdemeanor to store or leave a firearm in a manner in which the person knew or should have known that a minor would be able to gain access without parental permission and the minor gains possession of the firearm. It removes the current requirements that the firearm be able to be discharged and that the minor use it in one of the four ways currently listed.

The statute is further amended to provide a Class I felony if a person stores or leaves a firearm in a manner in which the person knew or should have known that a minor could gain access without parental permission and the minor uses the firearm to cause personal injury or death, not in self-defense.

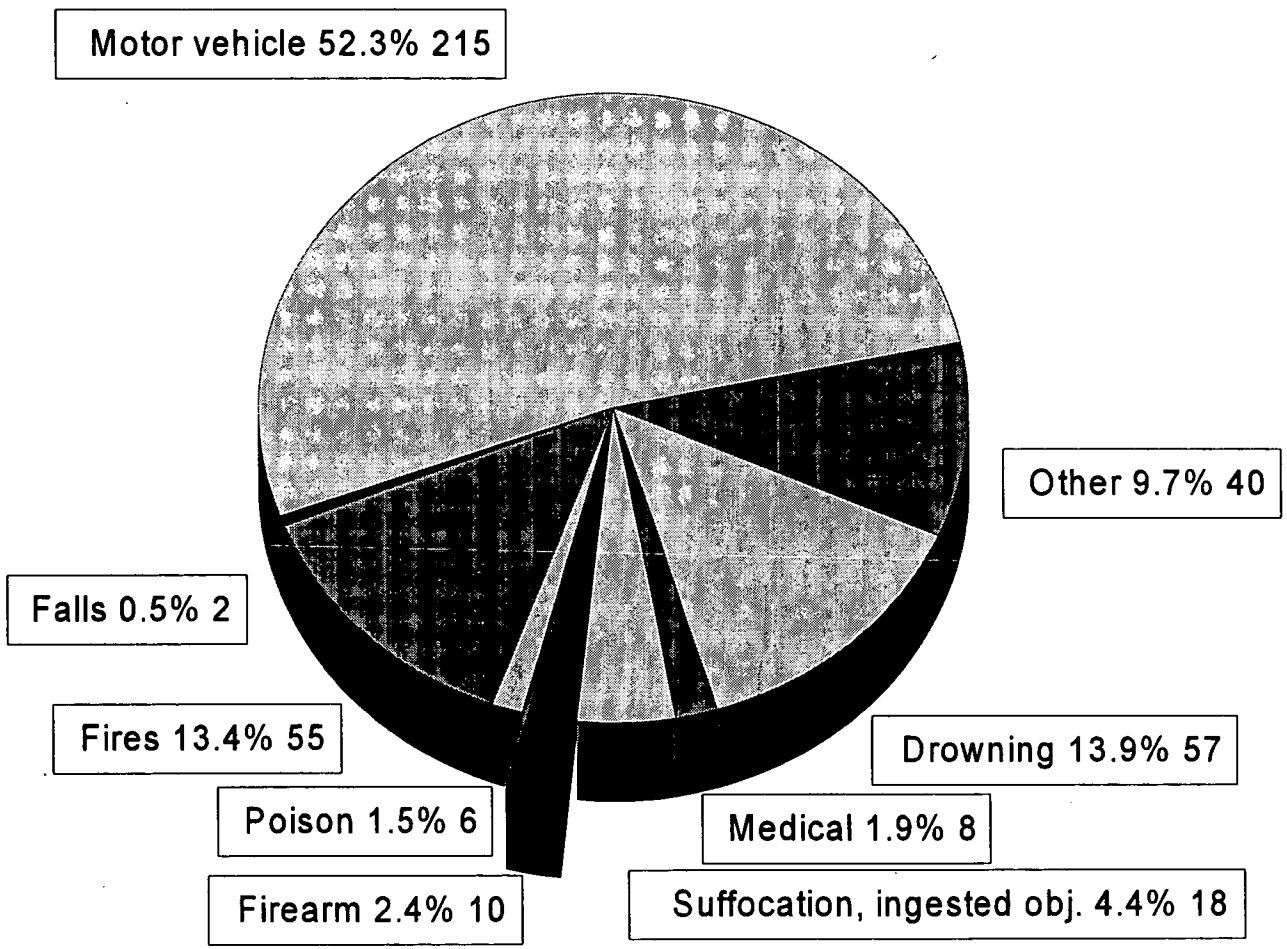
There is an exemption if the firearm is kept in a locked box or container or the firearm is equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

A new subsection is added to provide that if a minor is unintentionally shot by another family member, no arrest shall be made pursuant to this statute prior to seven days after the date of the shooting.

The bill becomes effective December 1, 1999, and applies to offenses committed on or after that date.

Fatal Accidents Among Children

In North Carolina: 1995-1996

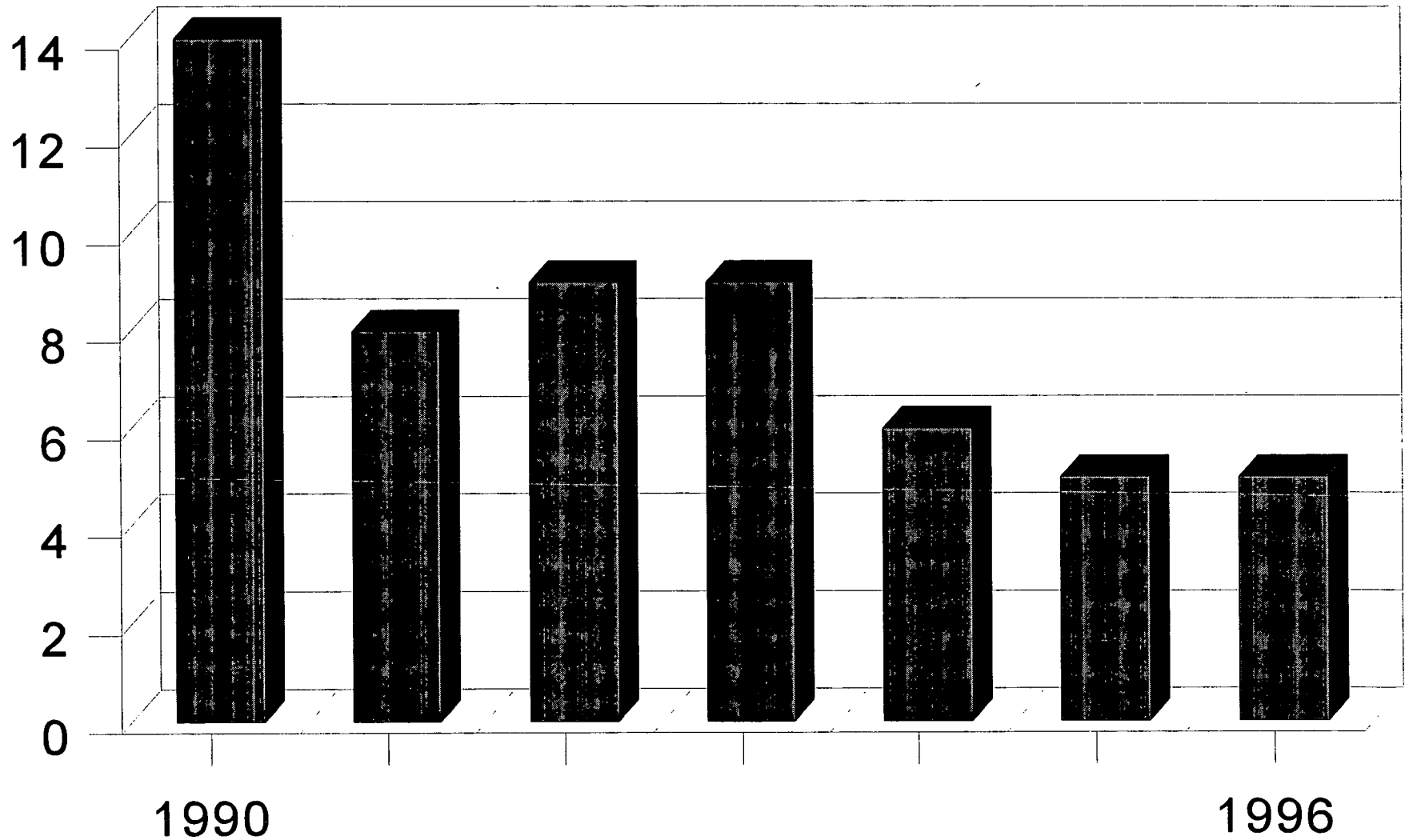


Source: National Center for Health Statistics

ATTACHMENT VII

Fatal Firearm Accidents

North Carolina Children 1990-1996



Source: National Center for Health Statistics

NewsToons



FULLY LOADED

By Steve Breen, Asbury Park (N.J.) Press, Copley News Service

Juvenile Violence Prevention Project, P.O. Box 62462, Durham, NC 27715-2462

Multiple Victim School Shootings:
A Media Overview of Recent Tragedies

Introduction:

Recent tragedies, highlighting issues surrounding juvenile access to firearms, have sparked calls for measures ranging from stronger guns laws to changes in juvenile justice procedures. Following is a media overview of salient information on shootings in Jonesboro, Arkansas; Paducah, Kentucky; and Pearl, Mississippi.

Gun control implications:

- The "Gun Free School Zones Act:" Passed as part of the Omnibus Appropriations Bill at the close of the 1996 104th Congress, this federal law, with limited exceptions, prohibits firearms within 1,000 feet of a school. In effect at the time of all three school shootings, no evidence indicates the law has had any impact on school homicides.

- Luke Woodham, the 16-year-old student in the Pearl incident was prevented from continuing his rampage by the Pearl High School principal using a firearm the principal kept in his car - in violation of the Gun Free School Zones Act.[1]

- In Arkansas, Kentucky, and Mississippi, state law prohibits firearms, including licensed concealed firearms, on school campuses.[2]

- Jonesboro residents do not want their community used as a rallying point for gun control. Westside Middle School principal Karen Curtner echoed sentiments in her community: "To me, the issue is not the weapons or the gun that was used. That had nothing to do with what happened. I think we have to look further than that."[3]

Juvenile justice implications:

- Although charged with 5 counts of murder and 10 counts of battery, "under Arkansas law, anyone under 14 must be tried as a juvenile and, if convicted, can only be held behind bars until their 18th birthday, unless they commit a crime while in juvenile detention that could prolong their sentence."[4]

Gun storage implications:

- Andrew Golden and Mitchell Johnson used a torch and hammer to try to break into a safe owned by Golden's father. When they failed, they broke into the home of Douglas Golden, Andrew's grandfather, removing several firearms from locked compartments.[5]

- "The state police confirmed today that Drew's grandfather had kept his rifles locked in a storage case but reported to the police on Tuesday morning, before the shootings, that the case has been broken into and the weapons stolen."[6]

Sociological implications:

- Emulation of urban, street gang violence appears to have played a role: "Around their classmates at Westside Middle School they acted the role of menacing street gang members. Mitchell, 13, claimed to belong to the Bloods gang, a pose he maintained by always wearing at least one piece of red apparel. His younger friend, Andrew, 11, flashed handsigns he explained as gang code."[7]

- Media sensationalism appears to increase the incidence of school shootings: "Thomas Blomberg, a criminologist at Florida State University, says that rather than dwelling on whether guns or Southern culture are to blame, experts and parents should worry about what he called 'copycatting.'

  "' Right now there are kids out there taking this in. They're saying "man, those kids in Arkansas were 11 and 13 and they blew those people away and they were in camouflage, man."'"[8]

1. Cable News Network interview, October 2, 1997.
2. "The Real Lesson of the School Shootings", *The Wall Street Journal*, 3-27-98
3. "Jonesboro suspects 'are not guys; they're children'", *USA TODAY*, 3-26-98.
4. Arkansas Boys Held as Prosecutors Weigh Options", *The New York Times*, 3-26-98.
5. "Prosecutors seek murder charges in school shootings", The Charlotte Observer, 3-27-98.
6. "In Jail, One Boy Cries While the Other Studies the Bible", *The New York Times*, 3-27-98.
7. "Warning signals were simply seen as boyhood bravado", *USA TODAY*, 3-26-98
8. "Juvenile homicide arrest rate on rise in rural USA", *USA TODAY*, 3-26-98.

Juvenile Violence Prevention Project, P.O. Box 62462, Durham, NC 27715-2462

'The Real Lesson Of the School Shootings'

Reprinted from the *Wall Street Journal*
March 27, 1998

By JOHN R. LOTT JR.

Abstract: *Studying multiple victim public shootings, University of Chicago researcher John R. Lott, Jr. concludes, "Allowing teachers and other law-abiding adults to carry concealed handguns in schools would not only make it easier to stop shootings is progress. It could also help deter shootings from ever occurring."*

In a controlled study covering 19 years, the number of multiple-victim public shootings in states which adopted concealed handgun laws declined by 84%. Deaths from these shootings plummeted on average by 90%, injuries by 82%. Higher arrest rates and increased use of the death penalty slightly reduced the incidence of these events, but the effects were never statistically significant.

"This week's horrific shootings in Arkansas have, predictably, spurred calls for more gun control. But it's worth noting that the shootings occurred in one of the few places in Arkansas where possessing a gun is illegal. Arkansas, Kentucky and Mississippi—the three states that have had deadly shootings in public schools over the past half-year—all allow law-abiding adults to carry concealed handgun for self-protection, except in public schools. Indeed, federal law generally prohibits guns within 1,000 feet of a school.

"Gun prohibitionists concede that banning guns around schools has not quite worked as intended—but their response has been to call for more regulations of guns. Yet what might appear to be the most obvious policy may actually cost lives. When gun-control laws are passed, it is law-abiding citizens, not would-be criminals, who adhere to them. Obviously the police cannot be everywhere, so these laws risk creating situations in which the good guys cannot defend themselves from the bad ones.

"Consider a fact hardly mentioned during the massive news coverage of the October 1997 shooting spree at a high school in Pearl, Miss.: An assistant principal retrieved a gun from his car and physically immobilized the gunman for a full 41/2 minutes while waiting for the police to arrive. The gunman had already fatally shot two students (after earlier stabbing his mother to death). Who knows how many lives the assistant principal saved by his prompt response?

"Allowing teachers and other law-abiding adults to carry concealed handguns in schools would not only make it easier to stop shootings in progress. It could also help deter shootings from ever occurring. Twenty-five or more years ago in Israel, terrorists would pull out machine guns in malls and fire away at civilians. However, with expanded concealed-handgun use by Israeli

citizens, terrorists soon found the ordinary people around them pulling pistols on them. Suffice it to say, terrorists in Israel no longer engage in such public shootings—they have switched to bombing, a tactic that doesn't allow the intended victims to respond.

"The one recent shooting of schoolchildren in Israel further illustrates these points. On March 13, 1997, seven seventh- and eighth-grade Israeli girls were shot to death by a Jordanian soldier while they visited Jordan's so-called Island of Peace. The Los Angeles Times reports that the Israelis had 'complied with Jordanian requests to leave their weapons behind when they entered the border enclave. Otherwise, they might have been able to stop the shooting, several parents said.'

"Together with my colleague William Landes, I have studied multiple-victim public shootings in the U.S. from 1977 to 1995. These were incidents in which at least two people were killed or injured in a public place; to focus on the type of shooting seen in Arkansas we excluded shootings that were the byproduct of another crime, such as robbery. The U.S. averaged 21 such shootings per year, with an average of 1.8 people killed and 2.7 wounded in each one.

"We examined a whole range of different gun laws as well as other methods of deterrence, such as the death penalty. However, only one policy succeeded in reducing deaths and injuries from these shootings—allowing law-abiding citizens to carry concealed handguns.

"The effect of 'shall-issue' concealed handgun laws--which give adults the right to carry concealed handguns if they do not have a criminal record or a history of significant mental illness--has been dramatic. Thirty-one states now have such laws. When states passed them during the 19 years we studied, the number of multiple-victim public shootings declined by 84%. Deaths from these shootings plummeted on average by 90%, injuries by 82%. Higher arrest rates and increased use of the death penalty slightly reduced the incidence of these events, but the effects were never statistically significant.

"With over 19,600 people murdered in 1996, those killed in multiple victim public shootings account for fewer than 0.2% of the total. Yet these are surely the murders that attract national as well as international attention, often for days after the attack. Victims recount their feelings of utter helplessness as a gunman methodically shoots his cowering prey.

"Unfortunately, much of the public policy debate is driven by lopsided coverage of gun use. Tragic events like those in Arkansas receive massive news coverage, as they should, but discussions of the 2.5 million times each year that people use guns defensively—including cases in which public shootings are stopped before they happen—are ignored. Dramatic stories of mothers who prevented their children from being kidnapped by carjackers seldom even make the local news.

"Attempts to outlaw guns from schools, no matter how well meaning, have backfired. Instead of making schools safe for children, we have made them safe for those intent on harming our children. Current school policies fire teachers who even accidentally bring otherwise legal concealed handguns to school. We might consider reversing this policy and begin rewarding teachers who take on the responsibility to help protect children.

"Mr. Lott, a fellow at the University of Chicago School of Law, is the author of "More Guns, Less Crime," forthcoming in early May from the University of Chicago Press."

Juvenile Violence Prevention Project, P.O. Box 62462, Durham, NC 27715-2462

'Study Finds No Big Rise in School Crime'

Reprinted from The New York Times,
March 25, 1998

BY TAMAR LEWIN

Abstract: *Despite a public perception of rising violence in schools, a survey on crime in public schools, released by the National Center for Education Statistics, finds no significant increase in violent crime. In the 1996-97 school year, only 1 in 10 experienced serious violent crime like rape, robbery, or fights with a weapon. Among the 1,234 school principals surveyed, none reported a homicide. Four reported suicides.*

"Just last week, in response to President Clinton's request for a report on school safety, the National Center for Education Statistics released its first survey on crime in the public schools, finding that more than half the schools had experienced some crime during the 1996-97 school year, but only 1 in 10 had a serious violent crime like rape, robbery, or fights with a weapon.

"Among the schools sampled, there were four suicides and no homicides.

"The Department of Education has no earlier data of its own, but the new findings, compared with similar studies by private groups in the past, seem to show that the incidence of crime in schools has not grown significantly over the last two decades.

"The incident in Arkansas yesterday -- and equally horrifying multiple school shootings in West Paducah, Ky., last December and in Pearl, Miss., last November -- have combined to create a perception that school violence is reaching new highs. But there is no statistical evidence of that.

"'The numbers seem to be pretty flat,' said Edith McArthur, one of the authors of the Department of Education study. "I'm a parent, too, and you get even one of these horrible shootings and it's scary. But it's such a rare event that they didn't show up at all in our study, and as a statistician, I'd have to say that there's no data showing an increase."

"The latest report was based on a survey of principals at 1,234 of the nation's 87,000 public schools.

"The only scientific study of violent deaths in school, by the Federal Centers for Disease Control and Prevention, found 105 violent deaths in the two years from 1992 to 1994, 85 of them homicide and the rest suicides or accidents. That is a far higher rate than the 25

violent school deaths the National School Safety Center, which tracks school deaths reported in the media, found in calendar year 1996 or the 26 it tracked last year.

"Not counting yesterday's shootings, the center said, there have been 18 violent deaths since school began in September. The Department of Education study found that fights without a weapon were the most commonly reported crimes, with about 190,000 incidents a year, followed by 116,000 incidents of theft and 98,000 of vandalism.

"Among more serious crimes, the study found about 4,000 rapes a year, 7,000 robberies and 11,000 fights or attacks with a weapon.

"Generally, elementary schools experience much less serious crime than middle schools or high schools. Only 4 percent of the elementary schools surveyed had had any serious crime during the year, compared with 19 percent of the middle schools and 21 percent of the high schools.

"School crime was more common in larger schools and city schools than in smaller or rural schools. A third of the largest schools, those with 1,000 students or more, had at least one serious violent crime. Among the schools with less than 300 students, only 4 percent reported such crimes.

"The survey found that more than three-quarters of the schools had some form of anti-violence program. But only 2 percent have become so concerned that they had hired guards and started metal checks."

GRNC

GRASS ROOTS NORTH CAROLINA / FORUM FOR FIREARMS EDUCATION
P.O. BOX 401, SHERRILLS FORD, NC 28673-0401 (828) 478-4121, www.grnc.org

SURVEY OF GUN OWNER SUPPORT FOR SAFE STORAGE LAWS

In August, 1998, GRNC began a survey of 18,500 North Carolina gun owners concerning their support for various gun control measures as part of a membership drive. The mailing was done to a randomly selected sample of Peterson Publications' list of North Carolina "Guns & Ammo" magazine subscribers comprising ½ of the total list.

According to Peterson Publications, the median age for the target group is 35 and the median income is $41,931. Seventy-one percent engage in hunting, and fully 99% own firearms. The vast majority of those mailed were not members of Grass Roots North Carolina.

The target sample returned 365 surveys, for a return rate of 4.1%. Given that typical return rates on commercial mailings are on the order of 2-3%, the relatively high level of participation by Guns & Ammo subscribers might indicate a high level of interest in the subject of gun control.

Among questions on the survey, GRNC asked whether gun owners would support mandatory safe storage laws. Of the surveys returned, 350 answered the question, of which 20 indicated support for mandatory trigger locks, 330 indicated they did not support mandatory trigger locks, and 15 failed to answer the question.

1998 GRNC Gun Owners Survey: Support for mandatory safe storage laws	
Gun owners indicating **support**:	5.48%
Gun owners indicating they **do not support**:	90.41%
Gun owners who **did not answer** the question:	4.11%

Conclusion: While the survey described above is strictly informal in nature, it implies that a relatively large number of gun owners in North Carolina oppose mandatory safe storage laws. Given that University of Chicago professor John R. Lott estimates 4.8 million North Carolinians own firearms[1], GRNC feels that it would be representing the interests of North Carolinans by opposing any proposed legislation requiring use of safe storage devices on firearms. Because GRNC is able to activate gun owners beyond its immediate membership, we believe our organization could generate strong opposition to such proposals.

1. Lott, John R., *More Guns, Less Crime: Understanding Crime and Gun Control Laws*, The University of Chicago Press, 1998, page 42.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030-7400

STATE & LOCAL AFFAIRS DIVISION
JEFF FREEMAN, NORTH CAROLINA STATE LIAISON

April 21, 1999

TO: Members of the North Carolina House of Representatives
FR: Jeff Freeman, NRA-ILA North Carolina State Liaison
RE: HB 1231

On behalf of the more than 90,000 NRA members living in the State of North Carolina, I respectfully urge you to oppose **HB 1231**, which seeks to increase the offense for unlawful storage of a firearm, as well as any attempt to mandate the use of trigger locks or other devices relating to the storage of firearms for the following reasons:

Today, fatal firearms accidents are at an all-time low.

Additional mandatory storage legislation and trigger lock proposals ignore the fact that North Carolina gun owners are extremely responsible with their firearms and that firearms are involved in a disproportionately low number of fatal accidents among children. In 1995-1996, children were almost twenty times more likely to die in a car accident, five times as likely to die in a fire and almost five times as likely to die as a result of drowning than to be fatally injured with a firearm (see the enclosed information specific to North Carolina.)

Trigger locks and other such devices can compromise one's right to self-defense.

The firearms storage methods which some are calling for in North Carolina could be dangerous and inhibit the use of a firearm in the home for self-defense. Storing a firearm in a securely locked box or removing a part from the firearm rendering it incapable of discharging a round puts firearms owners at a deadly disadvantage when suddenly confronted by an armed intruder in the home. Time spent unlocking a box to obtain access to a firearm, or reassembling and then loading a firearm, is time bought for a criminal.

Trigger locks can fail.

Trigger locks do not make firearms foolproof, and they should never be considered substitutes for safe firearms handling practices, dictated by long standing safety rules. Further, any reliance on devices, rather than safety rules, can instill a false sense of security that can lead to problems when a device-less firearm is encountered. In fact, most trigger lock manufacturers recommend their products not be used on loaded firearms.

The key is education.

Unfortunately, **HB 1231** is not aimed at preventing firearm accidents among children. In fact, the current mandatory storage law in North Carolina only becomes enforceable after someone is injured, killed, or an individual has violated one of its provisions. The current law does not adequately address the serious issue of firearms safety education for children. The best way to prevent accidents among children is through programs such as NRA's Eddie Eagle Gun Safety Program, which has been taught to 10 million children nationwide. Elementary school-aged children are taught that if they encounter a firearm unsupervised, they should remember Eddie's life-saving message: **"Stop. Don't Touch. Leave The Area. Tell An Adult!"**

What has been done in North Carolina to address this serious issue?

The North Carolina House and Senate recognized the importance of the Eddie Eagle Gun Safety Program in 1995 when they passed HB 767, a bill to encourage the state board of education to make the program available in the state's elementary schools. Additionally, in 1997, Governor Jim Hunt proclaimed the week of April 6-12 as being Eddie Eagle Gun Safety Week.

What else can be done in North Carolina to help increase firearms safety among children?

It is NRA's belief that debate on the important issue of our children's safety should focus on firearms safety education through volunteer groups, schools and law enforcement organizations. We would hope that the North Carolina House would take steps to strengthen the Eddie Eagle Gun Safety bill by fully funding its use in all elementary schools throughout North Carolina.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1194

Short Title: Need Consent to Tape Conversation. (Public)

Sponsors: Representatives Nesbitt; and Luebke.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO RECORD A TELEPHONE CONVERSATION WITHOUT THE CONSENT OF ALL PARTIES TO THE CONVERSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-287(a) reads as rewritten:

"(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~~ all parties 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."

Section 2. G.S. 15A-261 reads as rewritten:

"**§ 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. However, anyone who communicates with the user must be informed at the beginning of the conversation that the conversation is being recorded.

(c) Penalty. -- A person who willfully and knowingly violates subsection (a) of this section is guilty of a Class 1 misdemeanor."

Section 3. The title of Article 50 of Chapter 14 of the General Statutes reads as rewritten:

"Protection of Letters, Telegrams, ~~and~~ Telephone ~~Messages.~~ Messages and Telephone Conversations."

Section 4. Article 50 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-372.1. Unauthorized recording of telephone conversations.**

(a) It is unlawful for any person knowingly to record a telephone conversation without the consent of all parties to the conversation.

(b) This section does not apply if there is a court order authorizing or approving the recording of the telephone conversation.

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

Section 5. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1194:
Need Consent to Tape Conversation

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Nesbitt
Date:	April 21, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1194 would amend the law to require the consent of all parties to record a conversation.***

CURRENT LAW: Current law only requires that at least one party to the conversation be aware that the conversation is being recorded.

BILL ANALYSIS: House Bill 1194 amends the Electronic Surveillance statutes, G.S. 15A-287, and the Pen Register; Trap and Trace Device statutes, G.S. 15A-261, to require that all parties to the conversation be aware that the conversation is being recorded. The bill also creates a new G.S. 14-372.1 to prohibit the recording of telephone conversations absent a court order unless all parties are aware that the telephone conversation is being recorded. Violation of the new G.S. 14-372.1 is a Class 1 misdemeanor.

This act is 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 1048

Short Title: Amend Rule 4/Manner of Service. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4, is amended by adding a new subsection to read:

"(l) Process -- Notice of manner of service. -- When service of process is by means other than personal delivery, notice of the manner of service shall be filed with the court within 10 days after the date of service."

Section 2. This act becomes effective October 1, 1999, and applies to actions 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) **Hackney** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1048 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA RULES OF CIVIL PROCEDURE TO PROVIDE THAT NOTICE OF THE MANNER OF SERVICE OF PROCESS SHALL BE FILED WHEN SERVICE IS MADE OTHER THAN BY PERSONAL DELIVERY.

☒ 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

HOUSE JUDICIARY I COMMITTEE

April 27, 1999

Agenda

House Bill 920 – Vehicular Injury to Pregnant Woman
Representative Starnes

House Bill 1056 – Limitation for Product Liability Action
Representative Miller

House Bill 1194 – Need Consent to Tape Conversation
Representative Nesbitt

House Bill 1231 – Safe Storage of Firearms
Representative Kinney

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
April 27, 1999
5:00 p.m.
Minutes

The House Judiciary I Committee met on Tuesday, April 27, 1999 at 5:00 p. m., in Room 421 of the Legislative Office Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Cunningham, Ellis, Gardner, Gray, Insko, Miller, and Nesbitt. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Representative Gardner was recognized to explain **House Bill 1107, AN ACT TO PROVIDE FOR PARENTAL CONSENT FOR CERTAIN STUDENTS WHO COMPLETE CREDIT CARD APPLICATIONS AND TO PROHIBIT DEBT COLLECTION PRACTICES AGAINST CERTAIN PARENTS**, (Attachment II). She offered a proposed committee substitute, (Attachment III), and moved its adoption. The motion carried and the committee substitute was adopted for discussion. Representative Gardner stated that the committee substitute encouraged the Board of Governors of the University of North Carolina and the state's private colleges to call for the restriction of direct solicitation on campus of student credit card accounts. The bill would direct the schools to offer credit seminars as a part of freshman orientation. The bill strongly encouraged, but did not mandate that these provisions be carried out.

Representative Clary moved a favorable report for the committee substitute. The motion carried, (Attachment IV).

Representative Starnes was recognized to explain **House Bill 920, AN ACT TO PROVIDE FOR ENHANCED PUNISHMENT WHEN THE OFFENSE OF INJURY TO PREGNANT WOMAN BY VEHICLE IS COMMITTED**, (Attachment V). He said that the bill would increase the penalty for causing an injury to a pregnant woman when the injury caused the woman to suffer a stillbirth or miscarriage. He said that the bill was a part of a broader bill that passed the House during the previous session, but the Senate adopted only one provision of that bill. The part of the bill regarding the injury of a pregnant woman by vehicle was not adopted.

A summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment VI).

Ms. Anne Winner, North Carolina NOW, was recognized and spoke in opposition to the bill.

Ms. Deborah Ross, North Carolina ACLU, was recognized. She recounted the discussion that was held during the previous session regarding unintended consequences of the bill.

Committee discussion followed, and the bill was removed without further action.

Representative Miller presided during the discussion of the following bill.

Representative Nesbitt was recognized to explain **House Bill 1238, AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS**, (Attachment VII). An explanation of the bill may be found in the summary prepared by Ms. Hayes, (Attachment VIII).

Representative Nesbitt stated that he would like to offer an amendment to appropriate the sum of $500,000 from the Highway Fund to implement the act, (Attachment IX).

Representative Gray moved adoption of the amendment. The amendment was adopted.

Representative Nesbitt requested that the bill remain in committee in order to have additional time to discuss the substance of the bill. The bill remained in committee.

Representative Miller was recognized to explain **House Bill 1056, AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE,** (Attachment X). The bill was discussed during the April 26, 1999 afternoon meeting of the committee. A copy of the bill summary is attached, (Attachment XI). Representative Miller stated that he had researched a Kentucky statute that has as its key provision that any claim that may be brought more than six years after the initial purchase of a product must have a rebuttable presumption that the condition of the improvement was not defective or unsafe. He said that this would keep the six-year period in force, but would allow an injured party to carry the burden of proof of defect.

Mr. Dick Taylor, North Carolina Trial Lawyers Association, commented on the Kentucky statute. A copy of the Kentucky statute is attached, (Attachment XII).

A proposed committee substitute was distributed, (Attachment XIII).

Mr. John McMillan, North Carolina Citizens for Business and Industry, spoke in opposition to the bill.

Mr. Mike Carpenter, Home Builders Association, spoke in opposition to the bill.

Representative Gardner moved that the committee substitute be given a favorable report. Upon vote of the committee, the Chairman ruled that the motion carried, (Attachment XIV).

Representative Kinney was recognized to continue the discussion of **House Bill 1231, AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.** The bill was explained and discussed during the 10:00 meeting earlier in the day. Representative Kinney distributed a proposed committee substitute, (Attachment XV).

Ms. Hayes was recognized to explain the committee substitute. She stated that the committee substitute would essentially leave the existing law as it currently is, except to remove the requirement that the person reside in the same premises as a minor.

Following committee discussion, Representative Cunningham moved that the committee substitute be given a favorable report.

Representative Ellis was recognized to offer a substitute motion. The Chairman ruled that a substitute motion would not be in order unless it was of a higher precedence. Representative Ellis moved to give the bill an indefinite postponement. Following a voice vote, division was called. By a count of hands, five members voted to postpone the bill indefinitely, and five opposed the motion. The Chairman ruled that the motion failed.

The question now before the committee was to give the committee substitute a favorable report. Upon a voice vote, division was again called. Six members voted for a favorable report; five opposed the motion. The bill was given a favorable report, (Attachment XIV).

The meeting was adjourned.

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 27, 1999 (afternoon) — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AL ADAMS	North Carolina Grass Roots Leadership
George Reed	NC Council of Churches
Jeff Lipe	Boyer
Ellen DeRue	Nortis
John McMillan	MFHS
Kelli Culkin	DuPont
Leslie Bukacyn	NCCBI
Michelle Chan	Weyerhaeuser
John Williamson	NCDOT
Jenni McElles	McElles Consulting
Deborah Ross	ACLU
Mark Wilson	NC-NOW
Clayton Somers	Lobbyist
F. Paul Valone	Grass Roots North Carolina
Mike Concannon	" " " "
Jeff Rau	Grass Roots NC
THOMAS BEATTIE	GRASS ROOTS NORTH CAROLINA
Kim Hibbard	NCLM
J. H. Kaylor	Kaylor Law Firm

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1107

Short Title: Parent Consent/College Credit Card. (Public)

Sponsors: Representatives Gardner; Luebke and Russell.

Referred to: Education.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PARENTAL CONSENT FOR CERTAIN STUDENTS WHO COMPLETE CREDIT CARD APPLICATIONS AND TO PROHIBIT DEBT COLLECTION PRACTICES AGAINST CERTAIN PARENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"College Campus Credit Card Solicitation Act.

"**§ 116-260. Definitions.**

The following definitions apply in this Article:

(1) 'College campus.' -- The premises and grounds of a constituent institution.

(2) 'Constituent institution.' -- As defined in G.S. 116-2.

(3) 'Credit card.' -- A writing, number, or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(4) 'Credit card issuer.' -- A person, corporation, financial institution, or business entity that offers and issues credit cards.

(5) 'Solicitation.' -- An act of asking, enticing, or requesting a student to read, review, or consider materials relating to an application for a credit card or to complete an application for a credit card.

(6) 'Student.' -- A person who is under 21 years of age and who attends a constituent institution, whether enrolled on a full-time or part-time basis.

"**§ 116-261. Registration prior to solicitation.**

Prior to engaging in the solicitation of a student on a college campus, a credit card issuer shall register its intent to solicit the student for that purpose with an appropriate official of the constituent institution. The registration shall include the principal place of business of the credit card issuer and shall be in such form as required by regulation of the Board of Governors of The University of North Carolina.

"**§ 116-262. Parental consent required.**

An application for a credit card executed by a student who was solicited for the credit card on a college campus shall be void and unenforceable unless the parent or legal guardian of the student consents in writing to the student's submission of the application to the credit card issuer. Parental consent under this section shall not be construed as an agreement by the parent or legal guardian to be liable under the credit card agreement unless the parent or legal guardian specifically agrees in writing to do so.

"**§ 116-263. Debt collection against parent or guardian prohibited.**

It is unlawful for a credit card issuer to take any debt collection action against the parent or legal guardian of a student for whom a credit card has been issued unless the parent or legal guardian has agreed in writing to be liable for the debts of the student under the credit card agreement. A violation of this section shall be construed as an unlawful trade practice."

Section 2. This act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1107
Proposed Committee Substitute H1107-PCS4254-LH

Short Title: Credit Card Solicitation/Colleges. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO STRONGLY ENCOURAGE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA AND THE GOVERNING BOARDS OF PRIVATE COLLEGES AND UNIVERSITIES TO ADOPT POLICIES THAT RESTRICT THE DIRECT SOLICITATION ON CAMPUS OF STUDENTS FOR CREDIT CARD ACCOUNTS AND TO OFFER CREDIT SEMINARS AS PART OF FRESHMAN ORIENTATION.

Whereas, college students and their families are in debt more than ever, with an unprecedented number of college students relying on loans to help pay their tuition; and

Whereas, many college students compound their financial situation by incurring huge credit card debts; and

Whereas, on many college campuses the use of credit cards has become a way of life for many students, and few students know or understand the principles and benefits of sound money management and good credit; and

Whereas, although many college students are unemployed, credit card offers from vendors promise easy credit and bonuses for accepting the credit card; and

Whereas, many college students graduate owing substantial credit card balances and are plagued by poor credit; and

Whereas, college students generally do not realize that poor credit can follow them, affecting their housing options, the ability to buy a car, and the ability to

obtain employment, as many employers conduct credit checks of prospective employees; and

Whereas, it is important that college students and their families be made aware of the danger of substantial credit card debt, and that there are alternatives to credit cards which promote better and wiser management of personal funds, such as debit cards, prepaid long-distance calling cards, letter writing and e-mail instead of expensive long-distance calls, and checking accounts; and

Whereas, college students often are unaware of consumer rights, how to handle financial debt, or with whom to file complaints about the sales approach of financial institutions and credit card companies; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Board of Governors of The University of North Carolina is strongly encouraged to adopt a policy that restricts the direct solicitation on campus of students for credit card accounts. The Board of Governors of The University of North Carolina is also encouraged to offer a consumer credit seminar as part of freshman orientation at each constituent institution.

Section 2. The governing board of each private college or university that receives State funds is also strongly encouraged to adopt a policy that restricts the direct solicitation on campus of students for credit card accounts and to offer a consumer credit seminar as part of freshman orientation at the college or university.

Section 3. This act becomes effective July 1, 1999.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1107 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR PARENTAL CONSENT FOR CERTAIN STUDENTS WHO COMPLETE CREDIT CARD APPLICATIONS AND TO PROHIBIT DEBT COLLECTION PRACTICES AGAINST CERTAIN PARENTS.

☐ 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 920

Short Title: Vehicular Injury to Pregnant Woman. (Public)

Sponsors: Representatives Starnes; and Morris.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ENHANCED PUNISHMENT WHEN THE OFFENSE OF INJURY TO PREGNANT WOMAN BY VEHICLE IS COMMITTED.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.4A. Injury to pregnant woman by vehicle.**

(a) Definitions. -- The following definitions shall apply in this section:

(1) Miscarriage. -- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth. -- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) Any person who in the unlawful operation of a motor vehicle commits a felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 920:
Vehicular Injury to Pregnant Woman

BILL ANALYSIS

Committee: House Judiciary I
Date: April 26, 1999
Version: 1st Edition

Introduced by: Rep. Starnes
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 920 provides for enhances punishment when the offense of injury to a pregnant woman by vehicle is committed.***

BILL ANALYSIS: House Bill 920 creates a sentence enhancement statute for injury to a pregnant woman by vehicle. Any person who in the unlawful operation of a motor vehicle commits a felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed. Miscarriage and stillbirth are defined by the bill.

The bill is 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 1238

Short Title: Condemnation Law Modified. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 2. G.S. 136-119 reads as rewritten:

"**§ 136-119. Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will

in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 3. G.S. 40A-64 reads as rewritten:

"**§ 40A-64. Compensation for taking.**

(a) Except as provided in ~~subsection (b),~~ subsections (b) and (d), the measure of compensation for a taking of property is its fair market value.

(b) If there is a taking of less than the entire tract, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(c) If the owner is to be allowed to remove any timber, building or other permanent improvement of fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element to be compensated.

(d) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 4. G.S. 136-112 reads as rewritten:

"**§ 136-112. Measure of damages.**

(a) The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

(1) Where only a part of a tract is taken, the measure of damages for said taking shall be ~~the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.~~ the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking.

(b) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 5. Chapter 40A of the General Statutes is amended by adding a new section to read:

"**§ 40A-64.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller would accept, based on the reasonable price of the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 6. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-112.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller accept, based on the reasonable price of

the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 7. 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;~~ taken.

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification ~~thereof;~~ thereof.

(3) A statement of the property taken and a description of the area taken sufficient for the identification ~~thereof;~~ 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;~~ stated.

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the ~~taking; and~~ taking.

(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.

(7a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

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 8. G.S. 136-103 reads as rewritten:

"**§ 136-103. Institution of action and deposit.**

(a) In case condemnation shall become necessary the Department of Transportation shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Department of Transportation.

(b) Said declaration shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, 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 said Department of Transportation to be just compensation for said taking.

(c) Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable

diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the Department of Transportation is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(5a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(d) The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Department of Transportation to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Department of Transportation may amend the complaint and declaration of taking 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. 136-105 of this Chapter."

Section 9. This act becomes effective October 1, 1999, and applies to actions commenced on or after that date.

HOUSE BILL 1238:
Condemnation Law Modified

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Nesbitt
Date:	April 23, 1999	**Summary by:**	Susan L. Hayes**
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1238 makes various changes to the eminent domain and condemnation statutes.***

BILL ANALYSIS: House Bill 1238 amends the eminent domain and condemnation statutes relating to public, private, and highway condemnations to make four changes.

1. The bill permits the court to award owners of condemned property reimbursement for costs, including attorneys', appraisal and engineering fees, if the judgment in a condemnation action exceeds the commissioners' assessment by at least $700 and 20%.
2. The bill provides separate compensation for (a) a taking or restriction of reasonable access or other disruption of remaining parts of the property during construction and (b) damages due to an announcement of plans to condemn in advance of a condemnation.
3. The bill permits as evidence of fair market value (a) evidence of the property's value if it were subdivided and developed, less costs of development, and (b) the price paid by the condemnor for other comparable properties (other than judgments in condemnation actions).
4. The bill requires condemnation complaints to give a statement of the basis for the condemnor's estimate of just compensation, including the identity of estimators, methods and data used for the estimate, and copies of all appraisals.

The bill is effective October 1, 1999 and applies to actions filed on or after that date.

**Summary adapted from The Daily Bulletin, published by The Institute of Government.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Nesbitt **ATTACHMENT IX**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1238 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
Sen.)

moves to amend the bill on page 6, line 27-28

( ) WHICH CHANGES THE TITLE

by inserting a new section between the lines as follows:

"Section 9. There is appropriated from the Highway Fund, the sum of $500,000 to implement this act."

And by renumbering the remaining section accordingly.

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1056

Short Title: Limitation for Prod. Liability Actions. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50(6) is repealed.

Section 2. Article 5 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-46.5. Fifteen years.**

No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 15 years after the date of initial purchase for use or consumption."

Section 3. This act becomes effective October 1, 1999, and applies to causes of action that accrue on or after that date.

HOUSE BILL 1056:
Limitation for Prod. Liability Actions

BILL ANALYSIS

Committee: House Judiciary I
Date: April 22, 1999
Version: 1st Edition

Introduced by: Rep. Miller
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***House Bill 1056 changes the limitation within which a product liability case may be brought from six years to fifteen years after the date of purchase. The act is effective October 1, 1999 and applies to causes of action that accrue on or after that date.***

411.310 Presumptions in product liability actions.

(1) In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the subject product was not defective if the injury, death or property damage occurred either more than five (5) years after the date of sale to the first consumer or more than eight (8) years after the date of manufacture.

(2) In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the product was not defective if the design, methods of manufacture, and testing conformed to the generally recognized and prevailing standards or the state of the art in existence at the time the design was prepared, and the product was manufactured.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 91, sec. 3, effective June 17, 1978.

House Bill 1056

General Assembly of North Carolina

Session 1999

House Bill 1056

Short Title: Limitations for Products Liability Actions

Sponsor: Miller

Referred to Judiciary I

The General Assembly of North Carolina enacts:

Section 1. GS 1-50(5) and (6) are amended to read as follows:

§ 1-50. Six years

(5)a. ~~No~~ In any action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property ~~shall be brought~~ it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the condition of the improvement was not defective or unsafe if the damages occrred more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;

2. Actions to recover damages for the negligent construction or repair of an improvement to real property;

3. Actions to recover damages for personal injury, death or damage to property;

4. Actions to recover damages for economic or monetary loss;

5. Actions in contract or in tort or otherwise;

6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;

7. Actions against a surety or guarantor of a defendant described in this subdivision;

8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an ~~outside~~ presumptive limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an

improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, except as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

(6) ~~No~~ In any action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product, ~~shall be brought~~ it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the product was not defective if the personal injury, death or damage to property occurred more than six years after the date of initial purchase for use or consumption.

Section 2. This act becomes effective October 1, 1999 and ap;ies to actions that accrue 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) **Hackney** for the Committee on **JUDICIARY I**.

☐ Committee Substitute for
H.B. 1056 A BILL TO BE ENTITLED AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE.

☐ 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

HOUSE JUDICIARY I COMMITTEE

May 4, 1999

Agenda

House Bill 1131 – Raise State Tort Claims CAP
Representative Walend

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

HOUSE JUDICIARY I COMMITTEE
May 4, 1999
Minutes

The House Judiciary I Committee met on Tuesday, May 4, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Insko, Moore, Nesbistt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney asked that Representative Miller preside during the discussion of **House Bill 1238, AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS**, (Attachment II). The bill was explained during the afternoon meeting of the committee on April 27, 1999. Representative Nesbitt stated that the bill would amend the eminent domain and condemnation statutes relating to public, private, and highway condemnations. The changes made by the bill are outlined in the summary prepared by Ms. Susan Hayes, Committee Counsel, (Attachment II).

Representative Miller spoke in support of the bill.

Representative Ellis spoke in general support of the bill, but noted concern regarding the section of the bill dealing with evidence of fair market value.

Mr. John McMillan was recognized to comment on evidence of fair market value.

Mr. Jim Blackmon, Association of County Commissioners spoke in opposition to the bill.

Mr. Andy Romanet, North Carolina League of Municipalities, spoke in opposition to the bill.

Ms. Ruth Sappie, Department of Transportation, noted several concerns regarding the bill, including the section dealing with "paying attorney fees." She noted concern with the manner in which the legislation could affect the state's secondary roads program.

Mr. Richard Moore, Attorney General's Office, Department of Transportation, commented on cases that have been tried, and the jury awards in those cases.

Mr. Jim West, State Negotiator of Right-of-Ways, Department of Transportation, responded to questions, and stated the need to remove the secondary roads section of the bill.

Mr. Moore was again recognized and noted that the increased litigation that would result from the provision affecting secondary roads would require many additional attorneys general positions at a very large cost to the state.

No action was taken on the bill, and the meeting was adjourned.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 4, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Richard Moore	Atty Gen. for N.C. D.O.T.
T. A. West	NC DOT - Transportation Bldg
Bryan Beatty	DOS
Ann Case	NCRMA
Mari Lucia	GlaxoWellcome
Ann Bellam	SBE
Marc Lo Sr	DHHS
Andy Romcast	N.C.L.M.
Patty Elfler	Cary Youth Leadership
Jamie Le	" "
Shivi Kumar	" "
Sutton Schilawski	" "
Jeff Liner	" " "
Rebecca Privett	" " "
Susan Blackley	"
Christy MacPherson	" "
Lauren Reckford	
Garland Garrett	Gov Office
Kimberly Balsamello	Cary Youth Leadership
Missi Fahle	" "
Karen Bobinyec	" " "
Lida Pardue	" " "
Sarah Cheek	" " "
Candace McDowell	NEA
Justin Patel	Cary Youth Leadership
Ruth Sappee	NCDOT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1238

Short Title: Condemnation Law Modified. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 2. G.S. 136-119 reads as rewritten:

"**§ 136-119. Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will

in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 3. G.S. 40A-64 reads as rewritten:

"**§ 40A-64. Compensation for taking.**

(a) Except as provided in ~~subsection (b),~~ subsections (b) and (d), the measure of compensation for a taking of property is its fair market value.

(b) If there is a taking of less than the entire tract, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(c) If the owner is to be allowed to remove any timber, building or other permanent improvement of fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element to be compensated.

(d) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 4. G.S. 136-112 reads as rewritten:

"**§ 136-112. Measure of damages.**

(a) The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

(1) Where only a part of a tract is taken, the measure of damages for said taking shall be ~~the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.~~ the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking.

(b) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 5. Chapter 40A of the General Statutes is amended by adding a new section to read:

"**§ 40A-64.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller would accept, based on the reasonable price of the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 6. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-112.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller accept, based on the reasonable price of

the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 7. 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;~~ taken.

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification ~~thereof;~~ thereof.

(3) A statement of the property taken and a description of the area taken sufficient for the identification ~~thereof;~~ 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;~~ stated.

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the ~~taking; and~~ taking.

(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.

(7a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

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 8. G.S. 136-103 reads as rewritten:

"**§ 136-103. Institution of action and deposit.**

(a) In case condemnation shall become necessary the Department of Transportation shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Department of Transportation.

(b) Said declaration shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, 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 said Department of Transportation to be just compensation for said taking.

(c) Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable

diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the Department of Transportation is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(5a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(d) The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Department of Transportation to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Department of Transportation may amend the complaint and declaration of taking 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. 136-105 of this Chapter."

Section 9. This act becomes effective October 1, 1999, and applies to actions commenced on or after that date.

HOUSE BILL 1238:
Condemnation Law Modified

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Nesbitt
Date:	April 23, 1999	**Summary by:**	Susan L. Hayes**
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1238 makes various changes to the eminent domain and condemnation statutes.***

BILL ANALYSIS: House Bill 1238 amends the eminent domain and condemnation statutes relating to public, private, and highway condemnations to make four changes.

1. The bill permits the court to award owners of condemned property reimbursement for costs, including attorneys', appraisal and engineering fees, if the judgment in a condemnation action exceeds the commissioners' assessment by at least $700 and 20%.
2. The bill provides separate compensation for (a) a taking or restriction of reasonable access or other disruption of remaining parts of the property during construction and (b) damages due to an announcement of plans to condemn in advance of a condemnation.
3. The bill permits as evidence of fair market value (a) evidence of the property's value if it were subdivided and developed, less costs of development, and (b) the price paid by the condemnor for other comparable properties (other than judgments in condemnation actions).
4. The bill requires condemnation complaints to give a statement of the basis for the condemnor's estimate of just compensation, including the identity of estimators, methods and data used for the estimate, and copies of all appraisals.

The bill is effective October 1, 1999 and applies to actions filed on or after that date.

**Summary adapted from The Daily Bulletin, published by The Institute of Government.

HOUSE JUDICIARY I COMMITTEE

May 6, 1999

Agenda

House Bill 1238 – Condemnation Law Modified
Representative Nesbitt

Senate Bill 170 – Restructure Civil Contempt
Senator Carpenter

HOUSE JUDICIARY I COMMITTEE
May 6, 1999
Minutes

The House Judiciary I Committee met on Thursday, May 6, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Insko, Miller and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Senator Carpenter was recognized to explain **Senate Bill 170, AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FRR CIVIL CONTEMPT**, (Attachment II). The bill would establish a limit on the time a person could be imprisoned for civil contempt and raise the standard of proof in civil contempt proceedings. Further explanation may be found in the summary prepared by Ms. Susan Hayes, Committee Counsel, and Ms. Jo McCants, (Attachment III).

Ms. Hayes was recognized to comment on the bill. She pointed out that the addition of the willful failure to compliance is something that is currently being done in law, but is not expressly stated in the statutes.

Mr. Barry Miller, Chief, Child Support Section, Department of Health and Human Services, was recognized and expressed concern for the bill. He said that the bill seems to send a message that if one is willing to serve six months in prison, he may be off the hook for child support.

Mr. Gerald Robbins, Child Support Enforcement, Attorney General's Office, also expressed concern regarding the bill.

Mr. Walker Reagan, Staff Attorney, Research Division commented on the bill and responded to questions.

Ms. Jo McCants, Staff Attorney, Research Division responded to questions. Memos that had been prepared by Ms. McCants were distributed to the members of the committee, (Attachments IV and V).

Committee discussion followed. No action was taken on the bill.

Representative Miller presided over the remaining part of the meeting.

Representative Nesbitt was recognized to continue the discussion of **House Bill 1238, AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS**. (Attachment VI). The bill was discussed during the April 27 and May 4, 1999 meetings of the committee. A bill summary prepared by Ms. Hayes is attached, (Attachment VII). Representative Nesbitt stated that he had been working with several people regarding their concerns with the bill. He said that he felt that the bill should be sent to a subcommittee for further study.

Ms. Ruth Sappie, Department of Transportation, was recognized. She commented on situations currently being experienced by the State of Florida with regard to condemnation. She voiced support for sending the bill to a subcommittee.

Mr. Mike Taylor, a private citizen, was recognized and spoke in support of the bill.

Representative Miller stated that the bill would apply not only to highway matters, but also to any authority that has condemnation ability, which would include cities, counties, airport authorities and utilities. He announced that the bill would be sent to a subcommittee. The subcommittee was not appointed during the meeting.

The meeting was adjourned.

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 6, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY AND ADDRESS
1.)	Ruth Sappie	NCDOT
2.)	Constance Budgs	NCDHHS / CSE
3.)	Michelle Ford	NCDHHS/CSE
4.)	Shannon Ransone	DHHS/DSS
5.)	Matt Osborne	AOC
6.)	Bryan Beatty	DOJ
7.)	Barry Milla	DHHS - Child Support Enforcement
8.)	Linda K. Robinson	DOJ
9.)	Estherne Gwin	ElectriCities
10.)	Sandy Selph	LCSR
11.)	MIKE TAYLOR	PRIVATE CITIZEN, BURLINGTON, N.C.
12.)	Dirk Taylor	NCAM
13.)	Andy Romeviz	NCLM.
14.)	Frances Haskins	City of Raleigh
15.)	Michelle Cook	Weyerhaeuser
16.)	RICHARD MOORE	Atty GEN. ON behalf of DOT
17.)	Mike Commander	NCACC
18.)	[illegible]	[illegible]
19.)	Andrew Ezzell	City of Hendersonville
20.)	[illegible]	Moore - Van Allen
21.)	Roz Smith	NC CUE
22.)		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 170
Judiciary I Committee Substitute Adopted 4/15/99

Short Title: Restructure Civil Contempt. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21 reads as rewritten:

"**§ 5A-21. Civil contempt; imprisonment to compel compliance.**

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the ~~order; and~~ order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable ~~him~~ the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues, subject to the limitations provided in subsections (b1) and (b2) of this section.

(b1) A person who is found in civil contempt, ~~unless the contempt is failure by a person~~ but was not ~~arrested for the crime~~ arrested, for failure to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial

Identification Order, of Chapter 15A of the General ~~Statutes. In that case, he~~ Statutes may not be imprisoned more than 90 days unless ~~he~~ the person is arrested on probable cause.

(b2) The period of imprisonment for a person found in civil contempt, except as set forth in (b1), shall not exceed 30 days for the same act of disobedience or refusal to comply with an order of the court. A person who has not purged himself or herself of the contempt within the period of imprisonment imposed by the court under this subsection may be recommitted for one or more successive periods of imprisonment, each not to exceed 30 days. However, the total period of imprisonment for the same act of disobedience or refusal to comply with the order of the court shall not exceed six months, including both the initial period of imprisonment imposed under this section and any additional period of imprisonment imposed under this subsection. Before the court may recommit a person to any additional period of imprisonment under this subsection, the court shall conduct a hearing de novo. The court must enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a), and must find by clear, cogent, and convincing evidence that all of elements of G.S. 5A-21(a) continue to exist before the person can be recommitted. For purposes of this subsection, a person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience, failure, or refusal to comply with an order of the court.

(c) A person who is found in civil contempt under this Article may, nevertheless, for the same conduct, be found in criminal contempt under Article 1 of this Chapter, but the total period of imprisonment arising from the conduct may not exceed the greater of:

(1) The period during which the contemnor may be imprisoned for civil contempt; or

(2) The period of imprisonment provided in G.S. 5A-12(a)."

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged ~~contemnor.~~ contemnor on each of the elements set out in G.S. 5A-21(a). Each element shall be established by clear, cogent, and convincing evidence. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt."

Section 3. This act is effective when it becomes law and applies to all proceedings for civil contempt held on or after that date. Section 1 of this act applies to all persons imprisoned for civil contempt on or after that date and to all persons currently imprisoned for civil contempt.

SENATE BILL 170:
Restructure Civil Contempt

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Carpenter
Date:	May 6, 1999	**Summary by:**	Jo B. McCants, Staff Attorney Susan L. Hayes, Committee Counsel

SUMMARY: ***Senate Bill 170 establishes a limit on the time a person can be imprisoned for civil contempt and raises the standard of proof in civil contempt proceedings.***

CURRENT LAW: Under current law, a person found to be in civil contempt by a court may be incarcerated indefinitely until the person complies with the orders of the court and purges himself or herself of the contempt. Civil contempt is permitted under the law to give the court the power to enforce orders of the court. The law requires that the court find that the person has the ability to comply, but that the person refuses to comply with the orders of the court. The person imprisoned is considered to have the ability to gain his or her release by following the orders of the court. Civil contempt differs from criminal contempt in several ways. Relevant to this bill, a person can be held in criminal contempt for a maximum of 30 days as punishment for violating an order of the court.

Current law only requires a finding by the greater weight of the evidence the facts that constitute civil contempt and must specify what action must be taken to purge the civil contempt.

BILL ANALYSIS: Section 1 amends current law to also require the court to find that the person's non-compliance is willful before the court can hold a person in civil contempt. Current law only requires a finding of the following: 1) the order remains in force; 2) the purpose of the order may still be served by compliance; and 3) the person to whom the order is directed is able to comply with the order or is able to take measures that would enable the person to comply. This is consistent with the case law on civil contempt, but has previously not been expressly stated in the statute.

The term of imprisonment for a person found in civil contempt shall not exceed 30 days. However, if a person fails to purge himself or herself of the contempt within the term of imprisonment, the court may recommit the person. The recommitment may be for one or more successive terms of imprisonment, each not to exceed 30 days. The maximum term of imprisonment for the same act of disobedience or refusal to comply with a court order is 6 months, including both the initial term of imprisonment and any subsequent recommitment's. The court, on its own motion, must hold a hearing before recommitting a person for civil contempt. The court must find by clear, cogent and convincing evidence that all of the elements required to find someone in contempt still exists before recommitting the person.

A person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience or refusal to comply with the court order.

Section 2 amends current law by requiring the court in civil contempt proceedings to find the facts by the higher standard of clear, cogent and convincing evidence rather than the standard of the greater weight of the evidence, as the current law requires.

Section 3 makes the bill effective when it becomes law and applies to all proceedings for civil contempt

held on or after that date. The limit on the maximum term of imprisonment that a person can be required to serve for civil contempt would apply to all persons imprisoned on or after the effective date, as well as all persons currently imprisoned for civil contempt.

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May 5, 1999

MEMORANDUM

TO: Senator Carpenter

FROM: Jo B. McCants

RE: Senate Bill 170- **Restructure Civil Contempt**

It is my understanding that there may be some concern that Senate Bill 170 will undermine the court's ability to imprison a parent who fails to pay child support. Senate Bill 170 will not change the court's authority in contempt cases that relate to child support because G.S. 50-13.4 (f)(9) provides:

> An order for the periodic payments of child support is enforceable by proceedings for civil contempt, and **its disobedience may be punished by proceedings for criminal contempt**, as provided in Chapter 5A of the General Statutes.
>
> Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

As you can see from the bolded language above, a person who is held in contempt for failure to pay child support may be punished pursuant to the criminal contempt statutes. Therefore, under current law the term of imprisonment is 30 days. Senate Bill 170 does not change the amount of time a person can be imprisoned when the person is found in criminal contempt.

FROM: Jo. B. McCants

RE: **Senate Bill 170- RESTRUCTURE CIVIL CONTEMPT**

CIVIL CONTEMPT UNDER CURRENT LAW:

- CIVIL CONTEMPT GIVES THE COURT THE POWER TO ENFORCE ORDERS OF THE COURT.

- THE COURT MUST FIND THAT THE PERSON HELD IN CIVIL CONTEMPT HAS THE ABILITY TO COMPLY WITH THE COURT ORDER BUT REFUSES TO COMPLY.

- THE COURT MUST ONLY FIND BY THE "GREATER WEIGHT OF THE EVIDENCE" THE FACTS THAT CONSTITUTE CIVIL CONTEMPT, AND MUST SPECIFY WHAT THE PERSON MUST DO TO PURGE HIMSELF OR HERSELF OF THE CONTEMPT.

- A PERSON MAY BE IMPRISONED FOR **AN INDEFINITE PERIOD OF TIME** FOR CIVIL CONTEMPT. THE PERSON IS NOT RELEASED UNTIL HE OR SHE COMPLIES WITH THE COURT ORDER. **HOWEVER**. A PERSON FOUND IN CRIMINAL CONTEMPT* CAN ONLY BE IMPRISONED FOR A MAXIMUM OF 30 DAYS.

CIVIL CONTEMPT UNDER SENATE BILL 170:

- IN ADDITION TO THE CURRENT REQUIREMENTS, THE COURT MUST FIND THAT A PERSON'S FAILURE TO OBEY A COURT ORDER IS WILLFUL BEFORE THE PERSON CAN BE HELD IN CIVIL CONTEMPT.

- THE STANDARD OF PROOF IS RAISED FROM "THE GREATER WEIGHT OF THE EVIDENCE" TO "CLEAR, COGENT, AND CONVINCING."

- THE TERM OF IMPRISONMENT FOR A PERSON HELD IN CIVIL CONTEMPT WILL NOT EXCEED **30 DAYS**. (THIS CHANGE BRINGS THE PUNISHMENT FOR CIVIL CONTEMPT IN LINE WITH THE PUNISHMENT FOR CRIMINAL CONTEMPT.)

- A PERSON HELD IN CIVIL CONTEMPT, WHO HAS NOT PURGED HIMSELF OR HERSELF OF THE CONTEMPT, MAY BE RECOMMITTED FOR ONE OR MORE SUCCESSIVE TERMS OF IMPRISONMENT EACH NOT TO EXCEED 30 DAYS. THE COURT MUST HOLD A NEW HEARING AND REVIEW THE CONTEMNOR'S CASE BEFORE RECOMMITTING THE PERSON FOR ANY ADDITIONAL TERM OF IMPRISONMENT.

- THE MAXIMUM TERM OF IMPRISONMENT FOR **THE SAME ACT OF DISOBEDIENCE OR REFUSAL TO COMPLY WITH A COURT ORDER IS** 6 MONTHS. THIS TERM INCLUDES THE INITIAL TERM OF IMPRISONMENT AND ANY SUBSEQUENT RECOMMITMENTS.

* **NOTE**: EXAMPLES OF CRIMINAL CONTEMPT INCLUDE THINGS SUCH AS : **1)** WILLFUL BEHAVIOR COMMITTED WITHIN THE COURT INTENDED TO INTERRUPT THE COURT'S PROCEEDINGS; **2)** WILLFUL DISOBEDIENCE OF, RESISTANCE TO, OR INTERFERENCE WITH A COURT'S LAWFUL PROCESS, ORDER, DIRECTIVE, OR INSTRUCTION; **3)** WILLFUL REFUSAL TO BE SWORN OR AFFIRMED AS A WITNESS WHEN REFUSAL IS NOT LEGALLY JUSTIFIED; AND **4)** WILLFUL REFUSAL BY A DEFENDANT TO COMPLY WITH THE CONDITIONS OF PROBATION.

ROBERT C. CARPENTER
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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1238

Short Title: Condemnation Law Modified. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 2. G.S. 136-119 reads as rewritten:

"**§ 136-119. Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will

in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 3. G.S. 40A-64 reads as rewritten:

"**§ 40A-64. Compensation for taking.**

(a) Except as provided in ~~subsection (b),~~ subsections (b) and (d), the measure of compensation for a taking of property is its fair market value.

(b) If there is a taking of less than the entire tract, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(c) If the owner is to be allowed to remove any timber, building or other permanent improvement of fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element to be compensated.

(d) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 4. G.S. 136-112 reads as rewritten:

"**§ 136-112. Measure of damages.**

(a) The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

(1) Where only a part of a tract is taken, the measure of damages for said taking shall be ~~the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.~~ the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

If the condemnor takes or restricts reasonable access to the remaining property during the construction of the project, or otherwise reasonably disrupts the use of the remaining property during construction, those are separately compensable elements of damage.

(2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking.

(b) Damages suffered by a property owner due to a condemnor's announcement of plans to condemn in advance of a condemnation are recoverable as a separately compensable element of damages."

Section 5. Chapter 40A of the General Statutes is amended by adding a new section to read:

"**§ 40A-64.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller would accept, based on the reasonable price of the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 6. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-112.1. Evidence of fair market value.**

(a) If the property taken is suitable for development as a subdivided commercial property or a residential subdivision, as shown by competent expert evidence of a qualified land planner, engineer, or architect, evidence of value of the amount that a willing buyer would pay and a willing seller accept, based on the reasonable price of

the subdivided property less the cost of development, including the cost of infrastructure, developer's profit, and time over which the property could reasonably be sold, is competent evidence in determining the fair market value of the property.

(b) The price paid by the condemnor for other comparable properties by settlement of condemnation actions or in an arms-length transaction is competent evidence of value. Evidence of judgments in condemnation actions for other comparable properties is not competent evidence of value."

Section 7. 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;~~ taken.

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification ~~thereof;~~ thereof.

(3) A statement of the property taken and a description of the area taken sufficient for the identification ~~thereof;~~ 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;~~ stated.

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the ~~taking; and~~ taking.

(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.

(7a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

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 8. G.S. 136-103 reads as rewritten:

"**§ 136-103. Institution of action and deposit.**

(a) In case condemnation shall become necessary the Department of Transportation shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Department of Transportation.

(b) Said declaration shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, 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 said Department of Transportation to be just compensation for said taking.

(c) Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable

diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the Department of Transportation is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(5a) A statement of the basis for the condemnor's estimate of just compensation upon which the deposit of the sum of money estimated by the condemnor to be just compensation for the taking is based. This statement shall include the identity of the persons making the estimate, the methods and data used to make the estimate, and copies of all appraisals on which the estimate is based.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(d) The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Department of Transportation to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Department of Transportation may amend the complaint and declaration of taking 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. 136-105 of this Chapter."

Section 9. This act becomes effective October 1, 1999, and applies to actions commenced on or after that date.

HOUSE BILL 1238:
Condemnation Law Modified

BILL ANALYSIS

Committee: House Judiciary I
Date: April 23, 1999
Version: 1st Edition

Introduced by: Rep. Nesbitt
Summary by: Susan L. Hayes**
Committee Counsel

SUMMARY: ***House Bill 1238 makes various changes to the eminent domain and condemnation statutes.***

BILL ANALYSIS: House Bill 1238 amends the eminent domain and condemnation statutes relating to public, private, and highway condemnations to make four changes.

1. The bill permits the court to award owners of condemned property reimbursement for costs, including attorneys', appraisal and engineering fees, if the judgment in a condemnation action exceeds the commissioners' assessment by at least $700 and 20%.
2. The bill provides separate compensation for (a) a taking or restriction of reasonable access or other disruption of remaining parts of the property during construction and (b) damages due to an announcement of plans to condemn in advance of a condemnation.
3. The bill permits as evidence of fair market value (a) evidence of the property's value if it were subdivided and developed, less costs of development, and (b) the price paid by the condemnor for other comparable properties (other than judgments in condemnation actions).
4. The bill requires condemnation complaints to give a statement of the basis for the condemnor's estimate of just compensation, including the identity of estimators, methods and data used for the estimate, and copies of all appraisals.

The bill is effective October 1, 1999 and applies to actions filed on or after that date.

**Summary adapted from The Daily Bulletin, published by The Institute of Government.

HOUSE JUDICIARY I COMMITTEE

May 11, 1999

Agenda

Senate Bill 247 – Prescribed Burning in Forests
Senators Lee and Wellons

Senate Bill 288 – Unsolicited Commercial Electronic Bulk Mail
Senator Reeves

Senate Bill 297 – Limited Partnership /Professional Liability Changes
Senator Clodfelter

HOUSE JUDICIARY I COMMITTEE
May 11, 1999
Minutes

The House Judiciary I Committee met on Tuesday, May 11, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Insko, Miller, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 247, AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS**, (Attachment II), had been scheduled for consideration, but had been removed from the agenda. He noted that a committee substitute for its House companion bill, **House Bill 316**, had been given a favorable report by the committee on April 22, 1999.

Senator Reeves was recognized to explain **Senate Bill 288, AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS STATE**, (Attachment III). Senator Reeves stated that the purpose of the bill was to curb a practice known as "spamming," which is defined as sending false, misleading, or unsolicited commercial electronic mail to unsuspecting recipients. He said that America on Line has estimated that 30 % of the 30 million electronic mail messages going through their system on a daily basis are "spam." The bill is designed to relieve consumers and Internet service providers from increased problems resulting from "spam." Senator Reeves explained each section of the bill. A bill analysis explaining each section of the bill is attached, (Attachment IV).

Following committee discussion, the bill was removed from the agenda, to be discussed at a later meeting.

Senator Clodfelter was recognized to explain **Senate Bill 297, AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS**, (Attachment V). Senator Clodfelter offered a proposed committee substitute, (Attachment VI). Representative Nesbitt moved that it be adopted. The motion carried. Senator Clodfelter stated that the committee substitute reflected amendments that were suggested by the Office of the Secretary of State regarding the handling of filings, reports and other administrative matters.

Senator Clodfelter stated that the bill makes a number of proposed changes to the North Carolina Uniform Limited Partnership Act. The changes are attempts to bring into North Carolina law the 1986 revisions to the Uniform Partnership Act which were proposed by the commissioners on the uniform state laws. A summary of each section may be found in the bill analysis prepared by Ms. Susan Hayes, Committee Counsel, and Mr. O. Walker Reagan, Staff Attorney, (Attachment VII).

Mr. Tom Cook, Chairman, Tax Section, North Carolina Bar Association, commented briefly and responded to questions.

No action was taken on the bill, and the meeting was adjourned at 11:00 a.m.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 11, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ahler	NCACPA PO Box 30188 Raleigh
Sam Johnson	Atty
Tom Cook	Attorney - Wyrick Robbins Yates & Ponton, Raleigh
Bernard Allen	Sec. of State
Charlene P. Dawkins	Sec of State
Sheila A. Pope	Sec. of State
Lavya E. Hartsell	
Vernon James	NC Grange
Harriet Worley	
John Palesano	AT&T
Cam Caver	BP MHL
D Bradley	Tyson
Mark Dasher	Capital Group
Wes Hall	Legislative Intern (Senator Reeves)
Kim Hibbard	NCLM
Donald Simmons	ZDA, PA
Deborah Ross	ACLU
FRED TAYLOR	WRAL-TV
Brenda Douglas	Sprint
Todd Gregory	Poyner & Spruill
Lee McKellar	Moore - Van Allen
B Simmons	NC Equity
Alan Briggs	SOS
Harold Webb	Auto Assn
[illegible]	Auto Assn
[illegible]	NCAA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 247*

Short Title: Prescribed Burning in Forests/AB. (Public)

Sponsors: Senators Lee and Wellons.

Referred to: Agriculture/Environment/Natural Resources.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND WILDLIFE PURPOSES UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and

animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

(2) 'Prescribed burning' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of Environment and Natural Resources. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate in tons of the fuel located on the area.
(5) The objectives of the prescribed burning.
(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.
(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.
(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment and Natural Resources. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under Article 4C of this Chapter.
(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of Environment and Natural Resources.

(5) Any rules adopted by the Division of Forest Resources, Department of Environment and Natural Resources, to implement this Article.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources, Department of Environment and Natural Resources, may adopt rules that govern prescribed burning under this Article.

"**§ 113-60.45. Exemption.**

This Article does not apply when the Secretary of Environment and Natural Resources has cancelled burning permits pursuant to G.S. 113-60.27 or prohibited all open burning pursuant to G.S. 113-60.25."

Section 2. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 288
Information Technology Committee Substitute Adopted 4/22/99
Third Edition Engrossed 4/26/99

Short Title: Unsolicited Comm. Elec. Bulk Mail. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"**§ 1-75.4. Personal jurisdiction, grounds for generally.**

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

. . .

(4) Local Injury; Foreign Act. -- In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:

a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; ~~or~~

b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of ~~trade.~~ trade; or

c. 'Spam,' unsolicited bulk commercial electronic mail, was sent into or within this State by the defendant using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail."

Section 2. G.S. 14-453 reads as rewritten:

"**§ 14-453. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Access" means to instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, computer system, or computer network.

(1a) "Authorization" means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(1b) "Commercial electronic mail" means messages sent and received electronically consisting of commercial advertising material, the principal purpose of which is to promote the for-profit sale or lease of goods or services to the recipient.

(2) "Computer" means an internally programmed, automatic device that performs data processing or telephone switching.

(3) "Computer network" means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers or telephone switching equipment.

(4) "Computer program" means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.

(4a) "Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection with any of these services.

(5) "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer, computer system, or computer network.

(6) "Computer system" means at least one computer together with a set of related, connected, or unconnected peripheral devices.

(6a) "Data" means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form including, but not limited to, computer printouts, magnetic storage media, and punch cards, or may be stored internally in the memory of a computer.

(6b) "Electronic mail service provider" means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or receive electronic mail.

(7) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security, or any electronic data processing representation thereof.

(8) "Property" includes financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

(8a) "Resource" includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.

(9) "Services" includes computer time, data processing and storage functions.

(10) "Spam" includes unsolicited bulk commercial electronic mail, sent by a person using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail.

(11) "Unsolicited" means not addressed to a recipient with whom the initiator has an existing business or personal relationship and not sent at the request of, or with the express consent of, the recipient."

Section 3. Article 60 of Chapter 14 of the General Statues is amended by adding a new section to read:

"**§ 14-458. Computer trespass; penalty; damages.**

(a) It shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

(2) Cause a computer to malfunction, regardless of how long the malfunction persists.

(3) Alter or erase any computer data, computer programs, or computer software.

(4) Cause physical injury to the property of another.

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(b) Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another, and the damage is valued at less than two thousand five hundred dollars ($2,500) caused by the person's act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at two thousand five hundred dollars ($2,500) or more, caused by the person's act in violation of this section, the offense shall be punished as a Class G felony.

(c) Any person whose property or person is injured by reason of a violation of this section may sue for and recover for any damages sustained and the costs of the suit. Without limiting the general of the term, "damages" shall include loss of profits. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees, and may elect, in lieu of actual damages, to recover the lesser of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day. The injured person shall not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk commercial electronic mail over its computer network. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the greater of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day.

(d) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. 1-75.4(13)."

Section 4. This act becomes effective October 1, 1999. Section 3 of the act applies to offenses occurring on or after October 1, 1999.

SENATE BILL 288:
Unsolicited Electronic Bulk Mail

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Reeves
Date:	May 11, 1999	**Summary by:**	Brenda J. Carter, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	3rd Edition		

SUMMARY: ***Senate Bill 288 creates the criminal offense of "computer trespass", provides for a civil cause of action for damages resulting from "computer trespass" and makes transmitting unsolicited bulk electronic mail (spamming) to or through a computer network located in this State grounds for personal jurisdiction over a defendant.***

CURRENT LAW: In order for the court to exercise personal jurisdiction over a defendant, the grounds for such jurisdiction must existence in accordance with G.S. 1-75.4 and the defendant must be given notice by service of process in accordance with the provisions of Rule 4 (j) or 4 (j1). Rule 4(j) deals with the manner in which the court's jurisdiction may be exercised and sets out a number of methods of service for various circumstances. Rule 4(j1) sets out the requirements for service by publication on a party that cannot otherwise be served. A prerequisite to the court's exercise of personal jurisdiction is that the court first have jurisdiction of the subject matter of the claim. G.S. 1-75.4 provides that a court having jurisdiction of the subject matter has jurisdiction over a person who has been properly served under specified circumstances, including any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction, and any action claiming injury to property within this State arising out of an act or omission outside this State by the defendant.

BILL ANALYSIS: Section 1 of the bill amends the statute which sets out grounds for a N.C. court's personal jurisdiction over an out-of-state defendant. It provides that the court has jurisdiction when there is injury to property within this State arising out of an act committed outside this State by the defendant, and at the time of the injury the defendant was sending unsolicited bulk e-mail (commonly known as "spamming") in contravention of an electronic mail service provider's policies.

Section 2 of the bill amends the definition section of Article 60 of Chapter 14 of the General Statutes (Computer-Related Crime), by specifically defining "commercial electronic mail', "computer services", "electronic mail service provider", "spam", and "unsolicited".

Section 3 of the bill creates the criminal offense of computer trespass. The offense occurs when a person uses a computer or computer network without authority *and* with the intent to interrupt or disable a computer or computer network, cause a malfunction, alter or erase date, cause injury to another person's property, unlawfully copy data, or falsify e-mail information in connection with the transmission of unsolicited bulk e-mail. Computer trespass would generally be punishable as a Class 3 misdemeanor where there is no property damage. Assuming a person has no prior convictions, a Class 3 misdemeanor offense is punishable by 1-10 days community punishment. Community punishment may consist of a fine only; the maximum fine for a Class 3 misdemeanor is $200. The punishment for computer trespass is increased where there is damage to the property of another.

If there is damage to the property of another valued at less than $2500 caused by the person's violation of the statute, the offense is a Class 1 misdemeanor. Assuming a person has no prior convictions, a Class 1 misdemeanor offense is punishable by 1-45 days community punishment. Community punishment may consist of a fine only; the amount of the fine is in the discretion of the court.

If there is damage to the property of another valued at $2500 or more caused by the person's violation of the statute, the offense is a Class G felony. Assuming a person has no prior convictions, the minimum presumptive sentence for a Class G felony is 10-13 months intermediate or active punishment. Active punishment is incarceration; an intermediate punishment is supervised probation that may include fines, restitution, or community service.

In addition to the criminal penalties, any person whose property is injured by computer trespass has a civil cause of action and may sue for and recover any damages sustained along with the costs of the suit. If the injury arises from the transmission of unsolicited bulk e-mail, the injured person other than an e-mail service provider may recover attorneys' fees and in lieu of actual damages may recover ***the lesser of*** $25,000 per day or $10 for each piece of unsolicited bulk e-mail sent in violation of the statute. The injured person has no cause of action against the e-mail service provider who merely transmits the unsolicited bulk e-mail over its network. The injured e-mail service provider may recover attorneys' fees and in lieu of actual damages may recover ***the greater of*** $25,000 per day or $10 for each piece of unsolicited bulk e-mail sent in violation of the statute.

Any civil action must be commenced within one year, and jurisdiction may be had over an out-of-state defendant pursuant to Section 1 of the bill.

The act would become effective October 1, 1999. Section 3 of the act applies to offenses occurring on or after October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 297
Judiciary I Committee Substitute Adopted 4/21/99

Short Title: Ltd. Ptnersp./Prof. Liability Changes. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"**§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, and limited liability companies.**

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, or limited liability company is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, or limited liability company is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, or limited liability company maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~

corporation, limited partnership, or limited liability company is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment or otherwise, for the ~~debts and obligations of~~ debts, obligations, and liabilities of, or chargeable to, the professional corporation ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative.~~ malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to

Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or~~ the standards of professional conduct applicable to the rendering of the ~~services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities,~~ responsibilities, obligations, or ~~the imposition of~~ sanctions imposed under applicable licensing ~~statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed ~~in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative.~~ by another member, manager, employee, agent or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' ~~includes~~ means every trade, occupation, or profession.
(3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.
(4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.
(4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.
(5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.
(6) 'Real property' ~~includes~~ means land and any interest or estate in land.
(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G. S. 59-45 reads as rewritten:

"**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsection (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner, and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of~~ the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance~~ malfeasance committed by another partner or by an employee, agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved~~

~~in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

~~(c) Subsection (b) of this section does not affect any of the following:~~

~~(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.~~

~~(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.~~

~~(3) The liability of partnership assets for partnership debts and obligations.~~

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships.

Section 7. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**"

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

(1) ~~the~~ The name of the ~~partnership,~~ partnership.

(2) ~~the~~ The street address of its principal ~~office,~~ office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.

(4) The county in which the registered office is located.

(5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.

(6) A deferred effective date, if any.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership

agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or~~ by one or more ~~partners authorized by a majority in interest of the~~ partners.

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred twenty-five dollars ~~($100.00).~~ ($125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is ~~filed,~~ filed or the date specified in the application for registration, unless it is voluntarily withdrawn ~~before then~~ by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by~~ one or more ~~partners authorized by a majority in interest of the partners.~~ of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for ~~registration or renewal of a~~ registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G. S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation ~~"L.L.P."~~ 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59 as created by Section 6 of this act is amended by adding a new section to read:

"**§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at

that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars ($200.00).

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

(1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

(2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;

(3) The registered limited liability partnership or foreign limited liability partnership has been without a registered agent or registered office in this State for 60 days or more; or

(4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited

liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street address of the partnership's principal office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and

registered office for service of process, and the county in which the registered office is located.

(4) A brief statement of the business in which the partnership is engaged.

(5) A deferred effective date, if any.

(b) The registered agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this State or another person authorized to do business in this State.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"**§ 59-92. Effect of failure to register.**

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) If a foreign limited liability partnership transacts business in the State without a registration as a limited liability partnership, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

(e) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed

by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"**§ 59-93. Activities not constituting transacting business.**

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"**§ 59-94. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

As used in this Article, unless the context otherwise requires:

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement,

whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so

designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to ~~record~~ record, an appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"§ 59-301. Admission of ~~additional~~ limited partners.

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"§ 59-302. Voting.

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"§ 59-303. Liability to third parties.

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general~~

~~partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"**§ 59-304. Person erroneously believing himself limited partner.**

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving

distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"**§ 59-305. Information.**

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment

of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 22. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"§ 59-503. Sharing income, gain, loss, deduction or credit.

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"§ 59-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article, Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-903 reads as rewritten:

"**§ 59-903. Issuance of registration.**

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 35. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 36. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 37. This act becomes effective October 1, 1999, and applies to suits filed on or after that date, except Sections 2, 3, and 5 apply to liabilities arising on or after the effective date. Section 9 applies to registered limited liability partnerships and foreign limited liability partnerships whose fiscal years end on or after the effective date. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after the effective date. Section 27 of this act applies to (i) any limited partnership formed before October 1, 1999, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 297
Judiciary I Committee Substitute Adopted 4/21/99
Proposed House Committee Substitute S297-PCSSA-001

Short Title: Ltd. Ptnersp./Prof. Liability Changes. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"**§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.**

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment or otherwise, for the ~~debts and obligations of~~ debts, obligations, and liabilities of, or chargeable to, the professional corporation ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative.~~ malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed

in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State

applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or~~ the standards of professional conduct applicable to the rendering of the ~~services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities,~~ responsibilities, obligations, or ~~the imposition of~~ sanctions imposed under applicable licensing ~~statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed ~~in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative.~~ by another member, manager, employee, agent or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' ~~includes~~ means every trade, occupation, or profession.

(3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.

(4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.

(6) 'Real property' ~~includes~~ means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G. S. 59-45 reads as rewritten:

"**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsection (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner, and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of~~ the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance~~ malfeasance committed by another partner or by an employee,

agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

~~(c) Subsection (b) of this section does not affect any of the following:~~

~~(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.~~

~~(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.~~

~~(3) The liability of partnership assets for partnership debts and obligations.~~

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to

include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships.

Section 7. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**"

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

(1) ~~the~~ The name of the ~~partnership,~~ partnership.

(2) ~~the~~ The street address of its principal ~~office,~~ office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.

(4) The county in which the registered office is located.

(5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.

(6) A deferred effective date, if any.

(7) The fiscal year end of the partnership.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or~~ by one or more ~~partners authorized by a majority in interest of the~~ partners.

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred twenty-five dollars ~~($100.00).~~ ($125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is ~~filed,~~ filed or the date specified in the application for registration, unless it is

voluntarily withdrawn ~~before then~~ by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by~~ one or more ~~partners authorized by a majority in interest of the partners.~~ of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for ~~registration or renewal of a~~ registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G. S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation ~~"L.L.P."~~ 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59 as created by Section 6 of this act is amended by adding a new section to read:

"**§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars ($200.00). This fee shall be retained by the Secretary of State for the purposes of administering of this Chapter and shall not revert to the General Fund.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

(1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

(2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;

(3) The registered limited liability partnership or foreign limited liability partnership has been

without a registered agent or registered office in this State for 60 days or more; or

(4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among

the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street address of the partnership's principal office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

(4) A brief statement of the business in which the partnership is engaged.

(5) A deferred effective date, if any.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the secretary of state or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation or limited liability company

whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process or demand that is served on the registered agent.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"**§ 59-92. Effect of failure to register.**

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"**§ 59-93. Activities not constituting transacting business.**

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings

and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"**§ 59-94. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

As used in this Article, unless the context otherwise requires:

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province,

country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to ~~record~~ record, an

appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"**§ 59-301. Admission of ~~additional~~ limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"**§ 59-302. Voting.**

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"**§ 59-303. Liability to third parties.**

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"**§ 59-304. Person erroneously believing himself limited partner.**

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"**§ 59-305. Information.**

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 22. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"**§ 59-503. Sharing income, gain, loss, deduction or credit.**

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed

value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"**§ 59-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the

terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to

exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon

by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-901 reads as rewritten:

"§59-901. Law governing.

Subject to the Constitution of this State, (1) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~limited~~ partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

Section 35. G.S. 59-903 reads as rewritten:

"§ 59-903. Issuance of registration.

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall,

when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 36. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 37. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 38. This act becomes effective October 1, 1999, and applies to suits filed on or after that date, except Sections 2, 3, and 5 apply to liabilities arising on or after the effective date. Sections 4, 6, 7, 8, and 9 apply to registered limited liability partnerships formed on or after January 1, 2000. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after January 1, 2000. Section 27 of this act applies to (i) any limited partnership formed before October 1, 1999, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after October 1, 1999.

SENATE BILL 297: Limited Partnership/Professional Liability Law Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	May 11, 1999	**Summary by:**	O. Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	Proposed Committee Substitute S297-PCSSA-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 297 will amend the law related to limited partnerships and will clarify the limit of liability of professionals in limited liability companies, registered limited liability partnerships, and professional corporations. The bill also provides for registration of foreign limited liability partnerships and annual reports by registered limited liability partnerships and foreign limited liability partnerships.***

BILL ANALYSIS: Section 1 of the bill provides that the legal residence of a limited partnership, a limited liability company, and a registered limited liability partnership are determined the same as for a corporation.

Sections 2 and 3 amends the Professional Corporation Act (Chapter 55B) and the Limited Liability Company Act (Chapter 57C), respectively, to clarify that a shareholder, director, or officer of a professional corporation, or a member of a limited liability company, is not individually liable for the professional malpractice of another person in the professional organization but would be personally liable for their own malpractice.

Section 4 adds the definition of a "foreign limited liability partnership" to the Uniform Partnership Act (Chapter 59).

Section 5 also amends the Uniform Partnership Act to clarify the liability of partners in a registered limited liability partnership (RLLP) generally, and to clarify that a partner in a RLLP is not individually liable for the professional malpractice of another partner in the RLLP but would be personally liable for their own malpractice.

Sections 6, 7, 8 create a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a RLLP.

Section 9 requires RLLP's and foreign limited liability partnerships to file annual reports with the Secretary of State in a fashion similar to the annual reports required of corporations, nonprofits, and limited liability companies.

Section 10 provides for the registration of a foreign limited liability partnership in a fashion similar to the registration of a foreign corporation, foreign nonprofit corporation, a foreign limited liability company, and a foreign limited partnership.

Sections 11 through 37 amend the Limited Partnership Act in Article 5 of Chapter 59 and makes numerous clarifying changes regarding limited partnerships. Section 18 deletes the liability of limited partners to third parties under certain circumstances and provides that the limited partner is not liable even

if the limited partner participates in the management of the limited partnership. Section 27 allows for a limited partnership to amend the provisions for allowing a limited partner to withdraw and provides that in a limited partnership where no provisions are made for a limited partner to withdraw, the limited partner may not withdraw until the time for the dissolution and winding up of the limited partnership business.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and generally applies prospectively to actions by covered organizations on or after that date. Sections 4, 6, 7, 8, and 9 apply to registered limited liability partnerships formed on or after January 1, 2000. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after January 1, 2000.

HOUSE JUDICIARY I COMMITTEE

May 13, 1999

Agenda

Senate Bill 426 - Dissenters' Rights Amendments
Senator Clodfelter

Senate Bill 774 - Electronic Proxies For Nonprofits
Senator Clodfelter

Senate Bill 775 - Allow Electronic/Telephonic Proxies
Senator Clodfelter

Senate Bill 835 - Revise Law Governing Mergers
Senator Clodfelter

Senate Bill 1021 - Computerized Evidence Amendments
Senator Clodfelter

HOUSE JUDICIARY I COMMITTEE
May 13, 1999
Minutes

The House Judiciary I Committee met on Thursday, May 13, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Miller, Nesbitt and Redwine. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney announced that **Senate Bill 835, AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS**, had been removed from the agenda at the request of Senator Clodfelter,the bill's sponsor.

Senator Clodfelter was recognized to explain **Senate Bill 426, AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT FROM, OR OBTAIN PAYMENT AS A RESULT OF, CERTAIN CORPORATE ACTIONS AND TO MAKE OTHER CLARIFYING CHANGES TO THE LAW GOVERNING DISSENTERS' RIGHTS**, (Attachment II). The bill would limit the right of corporate shareholders to dissent from certain actions of the corporation the shareholder owns stock in, if the securities are designated as a national market system security. Senator Clodfelter stated that the bill had the support of the North Carolina Bar Association's Business Law Section and the Governor's Commission on Business Law.

Further explanation may be found in the bill analysis prepared by Mr. O. Walker Reagan, Staff Attorney. (Attachment III).

Mr. Bill Scoggin, North Carolina Bar Association, and Mr. Don Reynolds, Wyrick Robbins, responded to questions.

Representative Ellis moved that the bill be given a favorable report. The motion carried, (Attachment IV).

Senator Clodfelter was recognized to explain **Senate Bill 774, AN ACT TO AUTHORIZE THE APPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION**, (Attachment V). The bill was brought forward by the North Carolina Bar Association and amends the North Carolina Nonprofit Corporation Act. The bill would expand the method of transmission and submissions of proxies to include electronic transmission such as email.

Further explanation may be found in the bill analysis prepared by Ms. Susan Hayes, Committee Counsel and Ms. Jo McCants, Staff Attorney, (Attachment VI).

Mr. Don Hobart, North Carolina Commission on Business Law and Economy responded to questions.

Mr. Bernard Allen, Office of the Secretary of State, spoke in support of the bill.

Representative Thompson moved that the bill be given a favorable report. The motion carried, (Attachment VII).

Senator Clodfelter was recognized to explain **Senate Bill 775, AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION**, (Attachment VIII). The bill amends the North Carolina Business Corporation Act, and would expand the method of transmission and submission of proxies to include electronic transmission such as email. A bill summary is attached, (Attachment IX.

Representative Alexander moved that the bill be given a favorable report. The motion carried, (Attachment X).

Senator Clodfelter was recognized to explain **Senate Bill 1021 AN ACT CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF PUBLIC OR PRIVATE RECORDS MAINTAINED ON PERMANENT, NONERASABLE, MACHINE-READABLE MEDIA AND RELATING TO THE MAINTENANCE AND PRESERVATION OF PUBLIC RECORDS USING THOSE MEDIA**, (Attachment XI). The bill would expand the storage media for original written records to include any form of permanent non-erasable computer data storage. He noted that the primary technology presently in existence is the CD-ROM. A summary of the bill is attached, (Attachment XII)

Representative Blue moved that the bill be given a favorable report. The motion carried, (Attachment XIII).

Representative Miller was recognized and announced the appointment of the subcommittee to study **House Bill 1238, AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION**, (see May 6, 1999 minutes). The following members were appointed: Representatives Nesbitt, Chairman, Alexander, Blue, Ellis and Miller.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 13, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Reynolds	Wyrick Robbins 4101 Lake Boone Trail, Suite 300 Raleigh, NC 27607 (State Bar Assn Securities Chair)
DON HOBART	N.C. Bus Law Economy Commission
Richard Westbrook	UTU
Fran Preston	NCRMA
Vanglana Shah	N.C. Attorney General's Office
B. E. Beatty	DOJ
David Simmons	IDA, PA
Steve Woodson	NC Farm Bureau
Deborah Ross	BCLC
Bernard Allen	SOS
Andy Ellen	NCRMA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 426

Short Title: Dissenters' Rights Amendments. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT FROM, OR OBTAIN PAYMENT AS A RESULT OF, CERTAIN CORPORATE ACTIONS AND TO MAKE OTHER CLARIFYING CHANGES TO THE LAW GOVERNING DISSENTERS' RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 reads as rewritten:

"**§ 55-13-02. Right to dissent.**

(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares; (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities; (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes; (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit corporation or cooperative organization; or

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this Article may not challenge the corporate action creating his entitlement, including without limitation a merger solely or partly in exchange for cash or other property, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(c) Notwithstanding any other provision of this Article, there shall be no right ~~of dissent~~ of shareholders to dissent from, or obtain payment of the fair value of the shares in the event of, the corporate actions set forth in subdivisions (1), (2), or (3) of subsection (a) of this section ~~in favor of holders of shares of~~ if the affected shares are any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or (ii) held by at least 2,000 record ~~shareholders, unless in either case:~~ shareholders. This subsection does not apply in cases in which either:

(1) The articles of ~~incorporation~~ incorporation, bylaws, or a resolution of the board of directors of the corporation issuing the shares provide otherwise; or

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held ~~of record~~ by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. This act becomes effective October 1, 1999, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

SENATE BILL 426:
Dissenters' Rights Amendments

BILL ANALYSIS

Committee: House Judiciary I
Date: May 13, 1999
Version: First Edition

Introduced by: Senator Clodfelter
Summary by: O. Walker Reagan
Staff Attorney

SUMMARY: ***Senate Bill 426 would limit the right of corporate shareholders to dissent from certain actions of the corporation the shareholder owns stock in, if the securities are designated as a national market system security (stock traded on the NASDAQ).***

CURRENT LAW: Current law limits shareholders rights to dissent when the security is listed on a **national securities exchange**.

BILL ANALYSIS: Senate Bill 426 would amend G.S. 55-13-02 of the Business Corporation Act which governs the right of a shareholder to dissent from corporate actions taken to merger with another corporation, be taken over by another company, to sell all or substantially all of the corporations assets, or to substantially change the rights of the shareholder in the corporation. The bill would provide that a shareholder cannot dissent under this statute if the corporation's stock is designated as a national market system security (NASD) under the same circumstances that a shareholder currently cannot dissent if the stock is listed on a national securities exchange (i.e. New York Stock Exchange). Presumably one of the reasons for this exception generally is that because the stock is publicly traded the shareholder could sell the stock for what would be considered fair value and not be affected by the corporate action.

A national market system security is traded electronically and through telecommunications and not on a trading floor like a national securities exchange, and therefore is not considered to be within the exception currently in the law.

EFFECTIVE DATE: The bill would become effective October 1, 1999 and would apply to corporate actions to which shareholders could dissent occurring on or after that date.

S426-SMRU-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 426 A BILL TO BE ENTITLED AN ACT TO LIMIT THE RIGHT OF SHAREHOLDERS OF SECURITIES DESIGNATED AS NATIONAL MARKET SYSTEM SECURITIES TO DISSENT FROM, OR OBTAIN PAYMENT AS A RESULT OF CERTAIN CORPORATE ACTIONS AND TO MAKE OTHER CLARIGYING CHANGES TO THE LAW GOVERNING DISSENTERS' RIGHTS.

☒ 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 774
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Electronic Proxies for Nonprofits. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-7-24(a) reads as rewritten:

"(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint ~~a proxy~~ one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A ~~telegram, telex, facsimile, or other form of wire or wireless communication appearing to have been transmitted by a member, or a photocopy~~ photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii) by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 774:
Electronic Proxies for Nonprofits

BILL ANALYSIS

Committee:	House Judiciary 1	**Introduced by:**	Senator Clodfelter
Date:	May 13, 1999	**Summary by:**	Jo B. McCants, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***This bill is a recommendation of the North Carolina Bar Association and amends the North Carolina Nonprofit Corporation Act. The bill expressly allows a member to appoint one or more proxies to vote for the member or act on behalf of the member by signing an appointment form. A photocopy, facsimile transmission, or equivalent reproduction of a writing is considered a valid appointment form. The bill also allows a member to appoint one or more proxies by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member. Additionally, the proxy may be sent by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member. The act becomes effective October 1, 1999.***

CURRENT LAW: Currently, the law does not expressly provide that a member may appoint more than one proxy to vote or otherwise act on behalf of the member by signing an appointment form. G.S. 55A-7-24(a) provides in part, "A member may appoint a proxy to vote or otherwise act for him by signing an appointment for, either personally or by his attorney-in-fact." However, the law seems to imply that a shareholder may appoint more than one proxy because G.S. 55A-7-24(a) allows the member to appoint "one or more proxies" on an appointment form. (See statute on reverse side.). In addition, current law does not allow members to appoint proxies by a telegram, cablegram, electronic mail, or other form of electronic, wire, or wireless communication.

§ 55A-7-24. Proxies.

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram, telex, facsimile, or other form of wire or wireless communication appearing to have been transmitted by a member, or a photocopy or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 774 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THEAPPOINTMENT OF MULTIPLE PROXIES OF MEMBERS OF NONPROFIT CORPORATIONS BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

☒ 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 775
Judiciary I Committee Substitute Adopted 4/19/99

Short Title: Allow Electronic/Telephonic Proxies. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-7-22(b) reads as rewritten:

"(b) A shareholder may appoint ~~a proxy~~ one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A ~~telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy~~ photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the corporation, a shareholder may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder, or (ii) in the case of a public corporation, by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the corporation can reasonably assume that the appointment was made or authorized by the shareholder."

Section 2. This act becomes effective October 1, 1999.

SENATE BILL 775:
Allow Electronic/Telephonic Proxies

BILL ANALYSIS

Committee:	House Judiciary 1	**Introduced by:**	Senator Clodfelter
Date:	May 13, 1999	**Summary by:**	Jo B. McCants, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***This bill is a recommendation of the North Carolina Bar Association and amends the North Carolina Business Corporation Act. The bill expressly allows a shareholder to appoint one or more proxies to vote the shareholder's shares or act on behalf of the shareholder by signing an appointment form. A photocopy, facsimile transmission, or equivalent reproduction of a writing is considered a valid appointment form. The bill also allows a shareholder to appoint one or more proxies by a telegram, cablegram, electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder. In the case of a public corporation, a shareholder may appoint one or more proxies by any kind of electronic or telephonic transmission, even if not accompanied by written communication, when circumstances together with information exists so that the corporation can reasonable assume that the appointment was made or authorized by the shareholder. The act becomes effective October 1, 1999.***

CURRENT LAW: Currently, the law does not expressly provide that a shareholder may appoint more than one proxy to vote or otherwise act on behalf of the shareholder by signing an appointment form. G.S. 55-7-22(b) provides in part, "A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact." However, the law seems to imply that a shareholder may appoint more than one proxy because G.S. 55-7-22(b) allows the shareholder to appoint "one or more proxies" on an appointment form. (See statute on reverse side.). In addition, current law does not allow shareholders to appoint proxies by a telegram, cablegram, electronic mail, or other form of electronic, wire, or wireless communication.

§ 55-7-22. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A telegram, telex, facsimile or other form of wire or wireless communication appearing to have been transmitted by a shareholder, or a photocopy or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee;

(2) A person who purchased or agreed to purchase the shares;

(3) A creditor of the corporation who extended it credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under G.S. 55-7-31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) shall be revocable when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to G.S. 55-7-24 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 775 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE EXPRESSLY THE APPOINTMENT OF MULTIPLE PROXIES BY ELECTRONIC OR TELEPHONIC COMMUNICATION.

☒ 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 1021

Short Title: Computerized Evidence Amendments. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF PUBLIC OR PRIVATE RECORDS MAINTAINED ON PERMANENT, NONERASABLE, MACHINE-READABLE MEDIA AND RELATING TO THE MAINTENANCE AND PRESERVATION OF PUBLIC RECORDS USING THOSE MEDIA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-45.1 reads as rewritten:

"**§ 8-45.1. Photographic reproductions admissible; destruction of originals.**

(a) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, X ray or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 2. G.S. 8-45.3 reads as rewritten:

"**§ 8-45.3. Photographic reproduction of records of Department of Revenue.**

(a) The State Department of Revenue is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Department, including tax returns required by law to be made to the Department, and said photographs, photocopies, or microphotocopies, when certified by the Department as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings and matters as the originals thereof would have been.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 3. G.S. 8-34 reads as rewritten:

"**§ 8-34. Copies of official writings.**

(a) Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, or the State Department of Cultural Resources, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of ~~his~~ the keeper's office when there is such seal, or under ~~his~~ the keeper's hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under ~~his~~ the clerk's hand and seal of the county.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 4. G.S. 153A-436 reads as rewritten:

"**§ 153A-436. Photographic reproduction of county records.**

(a) A county may provide for the reproduction, by photocopy, photograph, microphotograph, or any other method of reproduction that gives legible and permanent copies, of instruments, documents, and other papers filed with the register of deeds and of any other county records. The county shall keep each reproduction of an instrument, document, paper, or other record in a fire-resistant file, vault, or similar container. If a duplicate reproduction is made to provide a security-copy, the county shall keep the duplicate in a fire-resistant file, vault, or similar container separate from that housing the principal reproduction.

If a county has provided for reproducing records, any custodian of public records of the county may cause to be reproduced any of the records under, or coming under, his custody.

(b) If a county has provided for reproducing some or all county records, the custodian of any instrument, document, paper, or other record may permit it to be removed from its regular repository for up to 24 hours in order to be reproduced. An instrument, document, paper or other record may be removed from the county in order to be reproduced. The board of commissioners may permit an instrument, document, paper, or other record to be removed for longer than 24 hours if a longer period is necessary to complete the process of reproduction.

(c) The original of any instrument, document, or other paper received by the register of deeds and reproduced pursuant to this Article shall be filed, maintained, and disposed of in accordance with G.S. 161-17 and G.S. 121-5. The original of any other county record that is reproduced pursuant to this Article may be kept by the county or disposed of pursuant to G.S. 121-5.

(d) If an instrument, document, or other paper received by the register of deeds is reproduced pursuant to this Article, the recording of the reproduction is a sufficient recording for all purposes.

(e) A reproduction, made pursuant to this Article, of an instrument, document, paper, or other record is as admissible in evidence in any judicial or administrative proceeding as the original itself, whether the original is extant or not. An enlargement or other facsimile of the reproduction is also admissible in evidence if the original reproduction is extant and available for inspection under the direction of the court or administrative agency.

(f) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 5. G.S. 160A-490 reads as rewritten:

"**§ 160A-490. Photographic reproduction of records.**

(a) General Statutes 153A-436 shall apply to cities. When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. The provisions shall not apply to magnetic tape, CD-R, or CD-RW."

Section 6. This act becomes effective December 1, 1999, with Sections 1, 2, and 3 applying to proceedings in the courts of this State pending on or after that date.

SENATE BILL 1021:
Computerized Evidence Amendments

BILL ANALYSIS

Committee: House Judiciary 1
Date: May 13, 1999
Version: 1st Edition

Introduced by: Senator Clodfelter
Summary by: Jo B. McCants, Staff Attorney

SUMMARY: ***This bill would allow records of any business, institution, department or agency of the government that are kept in the regular course of business and stored on any form of permanent, computer-readable media, such as a CD-ROM, to be admissible into evidence in any judicial or administrative proceeding. The medium used to store the information must not be subject to erasure or alteration. The provisions of this bill would also apply to documents produced by the Department of Revenue, the Office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, the Department of Cultural Resources, counties, and cities. The act becomes effective on December 1, 1999.***

BILL ANALYSIS:

Currently, documents kept in the regular course of business that are copied or reproduced by photographic, photostatic, microfilm, microcard, miniature photographic, or other process that accurately reproduces the original may be admitted into evidence as the original itself in any judicial or administrative proceeding. The introduction of a reproduced record does not preclude admission of an original. With regard to county and city records, current law requires that certain documents and any duplicate of such document be maintained in a secured manner. This bill would allow records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration, to be admissible into evidence. In addition, counties and cities will be required to maintain the computer-readable media in the same manner as other documents.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
S.B. 1021 A BILL TO BE ENTITLED AN ACT CONCERNING THE ADMISSIBILITY INTO EVIDENCE OF PUBLIC OR PRIVATE RECORDS MAINTAINED ON PERMANENT, NONERASABLE, MACHINE-READABLE MEDIA AND RELATING TO THE MAINTENANCE AND PRESERVATION OF PUBLIC RECORDS USING THOSE MEDIA.

☒ 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

HOUSE JUDICIARY I COMMITTEE

May 18, 1999

Agenda

Senate Bill 65 – Motor Vehicle Occupant Restraints
Senator Purcell

Senate Bill 1009 – Journalists' Testimonial Privilege
Senator Hoyle

HOUSE JUDICIARY I COMMITTEE
May 18, 1999
Minutes

The House Judiciary I Committee met on Tuesday, May 18, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Gray, Insko, Miller and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Senator Purcell was recognized to explain **Senate Bill 65. AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY,** (Attachment II). Senator Purcell said that the bill would require that the driver and all front seat occupants must wear seat belts which represents no change from the present law. He said that the present law does contain a fluke in that it does not require children ages 12 to under 16 to wear seat belts in the front seat. The bill calls for children less than 16 years of age must be appropriately restrained and the driver is responsible. Children aged 5-16 are required to wear seatbelts in the rear seat if there is a seatbelt available to them. Children less that 5 years of age are to be secured in a child restraint system in the rear seat in cars with an active front passenger side airbag unless the child restraint system is designed for use with airbags. There are no driver license or insurance points, no insurance surcharge, no court cost for violations, and no requirement for those over 16 years of age to be buckled in the rear seat.

Representative Alexander offered a proposed House committee substitute, (Attachment III). She said that the proposed committee substitute raises the age for which a child safety seat is required and the age of a child for which the driver is responsible for the restraint of the child. A bill summary prepared by Ms. Susan Hayes, Committee Counsel, is attached, (Attachment IV).

Representative Miller moved adoption of the proposed committee substitute and moved that the committee substitute be given a favorable report, unfavorable to original bill. The motion carried, (Attachment V).

Senator Hoyle was recognized to explain **Senate Bill 1009, AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE,** (Attachment VI). The identical House bill, House Bill 1200, was passed out of this committee on April 26, 1999. Senator Hoyle pointed out a few changes in the Senate version of the bill. He stated that the Senate version tightened the definition of "journalist" to cover the people that the bill is intended to cover and the definition of "news media." The effective date of the Senate version isl also different. The Senate version does not contain the provision allowing the court to grant attorneys' fees and reasonable expenses to the prevailing party in a proceeding to quash a subpoena.

Ms. Hayes was recognized for further explanation. A copy of a summary prepared by Ms. Hayes is attached, (Attachment VII).

Mr. Paul Coble, Raleigh City Counci, Mr. Kiernan Shanahan, Raleigh Council, Mr. Tom Fetzer, Mayor of Raleigh, and Ms. Celeste Broughton, Raleigh, were recognized and spoke in opposition to the bill.

Ms. Elizabeth Cook, Editor, Salisbury Post and Vice President of the North Carolina Press Association, spoke in support of the bill. A copy of her remarks is attached, (Attachment VIII).

Mr. John Bussian, North Carolina Press Association, and Ms. Cook responded to questions.

Mr. Wade Hargrove, North Carolina Braodcasters Association, spoke in support of the bill.

No action was taken on the bill.

The meeting was adjourned at 10:50 a.m.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 18, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shannon Bullock	Governor's Hwy Safety
Nicolle Snyder	
Bill Cassidy	
Barbara Moore	District Attorneys Conference
Michael Bryant	Driver Licensing / DMV
Cam Ayer	BPMHL
Burford	UNC HSRC
	WCSR
David Matthews	N.C. ADA
K. E. Beatty	DOJ
Celeste Brumfield	Raleigh 27609
Jim Penny	AAA
Paula A. Wolf	Covenant W/ NC's Children
Amanda Martin	Everett, Gaskins / NCPA
Hugh Stevens	" "
Elizabeth B. Cook	Salisbury Post
Wade Hargrove	Brooks, Pierce McLendon
Thomas V. Bennett	N.C. Child Fatality Task Force
Tom Fetzer	Raleigh
Kieran Shanahan	Raleigh
Paul Y. Coble	Raleigh
Gene Boyce	Boyce & Isley, Attys Raleigh
Philip R. Isley	Boyce & Isley, Attorneys, Raleigh
Emmanuel Dennis	AAA of the Carolinas
Melissa Suarez	John Locke Foundation
Mason Clark	John Locke Found

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

May 18, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ken Mitchell	NYSPIRG
Hal Miller	NCACCT
FRED TAYLOR	WRAL-TV
Ken Edd	Dist 65
Peg Dorer	Conf. of DAs
Andy Little	NC Bar Association
Deborah Ross	ACLU
Scott Brady	Pediatric Network
Harold Webb	Auto Dea
Evelyn Hawthorne	UNC-CH
Jonathan Howes	UNC-CH
VL McBride	[illegible]
Lynn Bonner	NEO
Dick Carlton	Merck
Mary Wells	RMC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sherri Johnson	Cherry Mount Area Chamber
Rick Davis	"
Charlie Glazener	" "
David Simms	ZPA, PA
Karen Perdue	"
Tommy Johnson	"
Mark Dixon	Capital Group
Scott Britt	NC Motorcycle Dealers Assoc.
Kelli Everest	" " "
Chris Pierce	NCMDA
Alicia Gregory	Poyner & Spruill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 65*
Health Care Committee Substitute Adopted 3/31/99
Third Edition Engrossed 4/20/99

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat ~~safety~~ belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208 must~~ shall have ~~such~~ a ~~safety~~ seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. Each rear seat occupant who is at least 5 years of age but who has not yet reached 16 years of age shall have a seat belt properly fastened about his or her body in compliance with this section if there is a seat belt available for that occupant. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-11 and G.S. 20-137.1 must be secured as required by those sections.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person~~

~~violating~~ Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(h) is repealed.

Section 4. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 5. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 6. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting ~~a child~~ one or more passengers of less than ~~12~~ 16 years of age shall have ~~the child~~ all such passengers properly secured in a child passenger restraint system ~~(car safety seat)~~ or seat belt which meets federal standards applicable at the time of its manufacture. ~~The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~ In vehicles equipped with active passenger-side front air bags, children shall be properly secured in a rear seat unless the child restraint system is designed for use with air bags or the child is in a properly fitted shoulder and seat belt, as follows:

(1) A child less than five years of age shall be properly secured in a child passenger restraint system (age appropriate child safety seat or age appropriate booster seat).

(2) A child less than five years of age who is too large to fit properly in a child restraint system shall be properly secured by a seat belt."

Section 7. G.S. 20-137.1(c) reads as rewritten:

"(c) Any ~~person~~ driver ~~convicted of violating~~ found responsible for a violation of this section may be punished by a ~~fine~~ penalty not to exceed twenty-five dollars ~~($25.00).~~ ($25.00), even when more than one child less than 16 years of age was not properly secured in a restraint system. No driver charged under this section for failure to have a child under ~~four~~ five years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system."

Section 8. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 65*
Health Care Committee Substitute Adopted 3/31/99
Third Edition Engrossed 4/20/99
Proposed House Judiciary I Committee Substitute S65-PCSSA-001

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat ~~safety~~ belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208 must~~ shall have ~~such~~ a ~~safety~~ seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (i) under 16 years of age and (ii) not required to be restrained in accordance with G.S. 20-137.1, must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S 20-11 and G.S. 20-137.1 must be secured as required by those sections.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

($25.00), even when more than one child less than 16 years of age was not properly secured in a restraint system. No driver charged under this section for failure to have a child under ~~four~~ five years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system."

Section 8. This act becomes effective October 1, 1999. G.S. 20-137.1(a1), as enacted in Section 6 of this act does not apply to persons who reach the age of four years old before October 1, 1999.

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating~~ Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(h) is repealed.

Section 4. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 5. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 6. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting ~~a child~~ one or more passengers of less than ~~12~~ 16 years of age shall have ~~the child~~ all such passengers properly secured in a child passenger restraint system ~~(car safety seat)~~ or seat belt which meets federal standards applicable at the time of its manufacture. ~~The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~

(a1) A child less than five years of age shall be properly secured in a weight appropriate child passenger restraint system unless the child is too large to fit properly in a child restraint system. In vehicles equipped with an active passenger-side front air bag, if the vehicle has a rear seat, a child less than five years of age shall be properly secured in a rear seat, unless the child restraint system is designed for use with air bags."

Section 7. G.S. 20-137.1(c) reads as rewritten:

"(c) Any ~~person~~ driver ~~convicted of violating~~ found responsible for a violation of this section may be punished by a ~~fine~~ penalty not to exceed twenty-five dollars ~~($25.00).~~

SENATE BILL 65:
Motor Vehicle Occupant Restraints

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Purcell, Gulley, Allran
Date:	April 20, 1999	**Summary by:**	Susan L. Hayes
Version:	Proposed Committee Substitute S65-PCSSA-001		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 65 raises the age for which a child safety seat is required and the age of a child for which the driver is responsible for the restraint of the child.

CURRENT LAW: Current law requires that the driver and any front seat passenger wear a seatbelt. Child safety seats are required for children under 4 years old and under 40 pounds, and any other child under 12 years old must wear a seatbelt. No drivers license or insurance points are assessed and violation is not a moving violation, but rather an infraction punishable by a $25.00 fine.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 65 amends the law to require that all children under the age of 16 must be in a child safety seat or a seatbelt. Children under the age of 5 years old must be in a weight appropriate child safety seat unless the child is too large to fit in one properly. In vehicles equipped with an active passenger-side front air bag, and if the vehicle has a rear seat, a child less than 5 years old must be in the rear seat unless the child safety seat is designed for use with an air bag. All other children must be in seat belts.

This act becomes effective October 1, 1999. The provisions which raise the age of a child required to be in a child safety seat from 4 years old to 5 years old do not apply to children who reach the age of 4 years old before the effective date.

S65-SMSA-001PCS

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 65 A BILL TO BE ENTITLED AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

☐ 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 1009
Judiciary I Committee Substitute Adopted 4/26/99

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any company or entity, or the employees, independent contractors, or agents of that company or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production."

Section 2. This act is effective when it becomes law and applies to all actions and proceedings pending in the courts of this State on or after that date.

SENATE BILL 1009:
Journalists' Testimonial Privilege

BILL ANALYSIS

Committee: House Judiciary I
Date: May 18, 1999
Version: 2nd Edition

Introduced by: Sen. Hoyle
Summary by: Susan L. Hayes
Committee Counsel

SUMMARY: ***Senate Bill 1009 creates a new statutory rule of evidence to provide a qualified privilege for journalists against disclosure of information in legal proceedings.***

BILL ANALYSIS: Senate Bill 1009 adds a new statute, G.S. 8-53.9, to the Chapter on evidence. The new statute provides a qualified privilege for journalists against disclosure in any legal proceeding the identity of any confidential or nonconfidential informant or the contents or source of any confidential or nonconfidential information obtained while acting as a journalist.

To overcome the qualified privilege, a party must show by clear and convincing evidence that the testimony or production sought (1) is highly relevant and material to the proper administration of the legal proceeding; (2) cannot be obtained from alternate sources; AND (3) is essential to the maintenance of a claim or defense of the party seeking the testimony or production. The court may only compel disclosure after a hearing and specific findings of fact.

The bill is effective when it becomes law and applies to all actions and proceedings pending in the courts of this State on or after that date.

DIFFERENCES FROM HOUSE VERSION ALREADY CONSIDERED:

The Judiciary I Committee has already considered and given a favorable report to House Bill 1200 which is a similar bill. The differences between that bill and this one are as follows:

1) The Senate version changes the definition of "journalist" from "any person" to "any company or entity, or the employees, independent contractors, or agents of that company or entity" who engage in the activities contained in the definition.

2) The Senate version changes the definition of "news medium" to require that the entity be regularly engaged "in the business of" publication or distribution of news via print, broadcast, or other electronic means "accessible to the general public".

3) The House version contained a provision allowing the court to grant attorneys fees and reasonable expenses to the prevailing party in a proceeding to quash a subpoena on the basis of the qualified privilege. The Senate version does not contain this provision.

4) The House version became effective December 1, 1999. The Senate version is effective when it becomes law.

S1009-SMSA-001

ATTACHMENT VIII

637-1232
Mayberry

VP NCPA

Good afternoon. I am Elizabeth Cook, editor of the Salisbury Post. I'm taking off my editorial-writing hat today to speak to you as a constituent. Usually I stick to the principal that the role of the press in the Legislature is as unbiased observer, reporting the news. But today I come to you as an advocate because of a concern I have about the free flow of information in this state.

Many times through the years, my colleagues and I at the Salisbury Post have been subpoenaed to testify in court or produce materials for different types of cases. Some of the requests are fairly simple; they want someone to take the stand and say that what was in the paper is indeed what the reporter heard and wrote. Some cases are more complicated, almost using our reporters as a primary source or investigator. And some are simply a nuisance.

For example, last year on the afternoon before her trial was to begin, teacher Deborah Brogden subpoenaed me and a reporter to testify in her trial in Rowan County Superior Court. She was accused of shooting a gun at her boss, a government official who had opted not to renew her contract. Her subpoena ordered me to produce "names and addresses of persons asked to resign, non-renewed, suspended with or without pay, etc., published in your newspaper for the 1996-97 school year." My attorney presented a motion to quash, which the judge granted. This exercise cost the Post more than $1,600.

I bring all this up because I feel journalists' freedom to interview sources and gather materials -- without looking over our shoulder for a subpoena -- is threatened. Historically, North Carolina courts have recognized reporters' constitutional right under the First Amendment and the N.C. Constitution to go about their jobs without being forced to testify about their interview sources or produce notes. But a recent court decision threatens that freedom. I am concerned that the number of subpoenaes we receive is growing and cast a chill on our newsrooms. As this continues, Reporters will be less willing to dig into stories that could make an important difference in

And sources who might have shared information with us confidentially will no longer do so. Many of our sources of tips and info. will dry up.

readers' lives if they think they will have to reveal confidential sources in court and produce materials they have gathered. As a result, the public will not get all the information that it needs to make decisions in a free, democratic society.

It's one thing to get a subpoena and know you may have to fight it -- and that the courts have historically been on your side. It's quite another to receive a subpoena and know you'll be forced to comply. The chill on reporting could be arctic in nature.

HB1200

Senate Bill 1009 gives me hope that we may be able to avoid that scenario. It writes into law what has long been practice in North Carolina, qualified protection for the media's news-gathering information -- something we have always believed the First Amendment and the N.C. Constitution provided. It doesn't say we NEVER have to testify. But it recognizes that journalists should be a secondary source for information for use in court, not a primary source. And it lays out guidelines under which a journalist would have to share testimony and material in court -- a three-part test requiring the person seeking the information to show that:

- The information is highly relevant.
- The information cannot reasonably be obtained from alternative sources.
- And the information is essential to proving the claim, charge or defense made by the party seeking the information.

As many of you know very well, newspapers are not in the business of being secretive. Most of what we know -- the good stuff -- we put in thepaper. That's our bread and butter. But on those occasions when prosecutors, defendants or others in court cases think they can ~~get more from us~~ further their case by putting our journalists on the stand, we feel the need for protections and clear guidelines. Our job as journalists and our ability to keep news flowing freely to the public would be seriously undermined by repeated calls to comply with subpoenas and hand over information.

I hope you will approve this legislation. I earnestly believe it will continue 3 of NC's strongest traditions – a free press, an informed citizenry and good gov't.

HOUSE JUDICIARY I COMMITTEE

May 20, 1999

Agenda

Senate Bill 746 – Structured Settlement Protection Act
Senator Cooper

HOUSE JUDICIARY I COMMITTEE
May 20, 1999
Minutes

The House Judiciary I Committee met on Thursday, May 20, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Blue, Ellis, Gardner, Insko, Miller, Moore and Nesbitt. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, (Attachment II), which is a companion bill to his own bill, House Bill 853, would be explained by Senator Cooper. The bill would establish certain minimal requirements such as the requirement for a settlement recipient to seek financial counseling and a judge's approval for the transfers of structured settlement rights. Those requirements are outlined in a bill analysis prepared by Ms. Susan Hayes, Committee Counsel, (Attachment III). Senator Cooper offered background for the bill, including his concern regarding possible tax consequences that might result from the sale of a structured settlement to a factoring company. He noted that the bill is supported by the North Carolina Spinal Cord Association.

Senator Cooper offered a proposed committee substitute, (Attachment IV). Representative Blue moved that the committee substitute be adopted for discussion by the committee. The motion carried.

Mr. Sandy Sands, representing the Association of Settlement Purchasers, was recognized and spoke in opposition to the bill. Two handouts stating opposition to the bill were distributed to the members by Mr. Sands, (Attachments V and VI).

Mr. John E. "Buck" Chapaton, Vinson and Elkins Law Firm, Washington, D.C., was recognized and spoke in opposition to the bill. He stated that there were no tax problems to any party resulting from the sale of a structured settlement.

Mr. and Mrs. Eddie Biddix spoke in opposition to the bill and gave a personal account of their positive experience with a buy-out of a structured settlement.

Mr. David Loman, Hunton and Williams Law Firm, was recognized. Mr. Loman stated that tax consequences are present as a result of a factoring transaction of a structured settlement.

Committee discussion followed.

No action was taken on the bill.

Joe Hackney
Representative Joe Hackney/Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 20, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Earl F Nesbitt	NASP
Eddie & Cindy Biddix	
John E. Chapoton	Vinson & Elkins
Sandy Sands	WCSR
Tom Duncan	WCSR
Cindy Sanders	WCSK
Phil Tiefer	Atty Gen Office
Reid J.R. Rubin	
David Lowman	HEW
John McARTHUR	General Electric

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee

has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be

required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties;

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service;

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, but nothing contained in this act shall imply that any transfer under a transfer agreement reached prior to such date is effective.

SENATE BILL 746:
Structured Settlement Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Cooper
Date:	May 20, 1999	**Summary by:**	O. Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***Senate Bill 746 would enact the Structured Settlement Protection Act to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable.***

CURRENT LAW: There is no specific statutory law in North Carolina which governs the transfer or assignment of structured settlement proceeds to other third parties. Structured settlement agreements are either contracts between two parties or agreements of the parties recognized by the court and enforced by order of the court as a consent agreement. Assignment of those rights would typically be as a matter of contract.

BILL ANALYSIS: Senate Bill 746 would require that an agreement transferring or assigning the rights to receive structured settlement proceeds in the future must be approved by the court or administrative agency authorized to approve the settlement and must meet minimal disclosure requirements as to the effect and costs of the assignment.

Section 1 of the bill creates a new Article 44B in Chapter 1 to be known as the NC Structured Settlement Protection Act. All references are to G.S. 1-543.__.

Section .11 sets out the requirements that must be satisfied before a transfer of structured settlement rights is effective. This section requires that the transfer be approved in advance by the court or responsible administrative authority based upon a judicial or administrative finding that:

1. The transfer complies with the law.
2. The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures of the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
3. The transferee has established that the transfer is necessary for the to avoid an imminent financial hardship and would not subject the payee or the payee's dependents to future financial hardship.
4. The payee has received independent professional advice on the effects of the transfer.
5. If the transfer is contrary to the terms of the structured settlement, all the parties to the settlement and the court that originally approved the settlement have approved the transfer.

6. The transferee has given all relevant tax payer identification information to the person paying the settlement.
7. The discount rate for determining the present value of the payment rights does not exceed the annual percentage rate permitted under a consumer credit installment sales contract (G.S. 25A-15(b)(4)) calculated as if the net amount payable to the payee, as provided in the act, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred were the payee's payments of principal plus interest on the loan.
8. The transfer of structured settlement payment rights is fair and reasonable.

Section .12 sets out the definitions used in the law including definitions for "dependents", "federal hardship standard", "independent professional advice", and "responsible administrative authority".

Section .13 establishes the court or authority that has jurisdiction to approve these transfers.

Section .14 sets out the procedures for seeking prior approval of a proposed settlement rights transfer. This includes requiring that all relevant documents (specified in the bill) be given at least 30 days prior to a hearing on the proposed transfer approval to the court, all interested parties (defined) and the Attorney General. The Attorney General is authorized to appear and be heard on any application for authorization to transfer structured settlement payments.

Section .15 provides that the provisions of this law may not be waived. It also provides for penalties to any transferee that receives payments under a structured settlement assigned to the transferee in violation of this statute, but this section also protects the payee from any losses arising from an invalid transfer.

Section .16 makes it clear that this act does not affect any other laws that might apply to or affect the transfer of structured settlement rights.

Section 2 of the bill adds a new section to the Special Proceedings statutes to provide that applications for the approval of transfer of structured settlement rights is a special proceeding and is to be heard in Superior Court.

Section 3 makes the bill effective October 1, 1999 and applicable to transfers of rights under transfer agreements entered into on or after that date, but the bill does not imply that any transfer under a transfer agreement reached prior to that date is effective.

S746-SMSA-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBTITUTE
S746-CSRN-001
Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible

administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future; provided, however, that if, at the time the payee

and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties;

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy

of such notice with the court or responsible administrative authority;

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service;

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether

from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the

transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

PROBLEMS WITH SB746 (STRUCTURED SETTLEMENT PROTECTION ACT)

1. Many of the definitions in G.S. §1-543.12 give the act much broader application and effect than is necessary to protect consumers.

   - For instance the definition of "applicable law" requires a reviewing court to review, know, and correctly apply the laws of numerous jurisdictions in considering a request for approval of a transfer. It poses numerous conflict of law problems. (This definition should be deleted.)

   - "Dependents" as currently defined would give ex-spouses the ability to interfere with a person's financial decisions and would require notice be provided to a person's minor children, probably requiring a guardian ad litem. (This section should be deleted.)

   - "Discounted Present Value" uses a rate for determining the present value of an annuity that has no bearing on an assignment or loan transaction and is likely to be less than the rate at which the annuity was initially issued by the insurance company. (This section should be deleted or revised to provide for a rate that has more bearing on financial transactions, such as the prime rate of interest.)

   - "Favorable tax determination" and "federal hardship standard" benefit only the insurance companies that issue these annuities. (These sections should be deleted.) This is a smoke screen anyway.

   - The definition of "independent professional advice" when coupled with the standard necessary to procure court approval (which basically limits these transactions to individuals who are in desperate financial straits) insures that these transactions will never get done. In essence, under this definition, the bill requires the payee (who will not be able to procure court approval of the transaction unless they can prove that they will sustain imminent financial harm) to retain a lawyer, CPA or other professional on their own nickel to advise them in connection with the transaction. The professional's fees cannot be a contingent fee (i.e., contingent on approval of the transaction) or can the transferee pay the fee. If a person can afford to hire a professional, they probably cannot qualify under the imminent financial harm standard. It is the classic Catch-22. (This definition should be deleted.)

   - "Transfer" is defined such that the bill would apply to loan transactions as well as sales. It requires people to file a lawsuit just to borrow money. This is contrary to the current UCC as found in N.C.G.S. 25-9-318. (Delete everything after "assignment" up through "encumbrance.")

2. G.S. §1-543.11(2)–Disclosures. There are only a couple of issues with the disclosure requirements. Specifically, this section imposes disclosure requirements on transferees.

   - Requiring disclosure of the terms of the transaction, similar to a truth-in-lending disclosure is good. Unfortunately, consumers could use the same types of disclosures when they get

into structured settlements. The bill can be easily amended to require structured settlement obligors to provide similar disclosures to claimants when they are setting up a structured settlement. Again, if consumer education and protection is the objective, then requiring "front-end" disclosures is natural.

- Section (g) requires a transferee to disclose a "quotient" to the payee. However, the quotient has little, if any, relationship to the transaction and would cause confusion. Moreover, the denominator of the quotient has no relationship to the consumer credit transactions and the random rate used by the IRS in estate tax valuation situations. (This section should be deleted.)

- Court orders. Requiring court approval of these transactions in every case would have a chilling effect on these transactions, effectively preventing anyone except the insurance companies who hold the veto for court approval, from participating in this business.

- G.S. §1-543.11(3) virtually insures that no transactions will ever get approved. Many, many people who have entered into secondary market transactions in the past have done so in order to buy or improve a home, open or expand a small business, continue their educations, pay down debts, pay off tax liens and child support obligations, or pay for medical treatment. None of these legitimate reasons would qualify under the imminent financial hardship standard. Moreover, to require the payee to establish that the transfer will not subject him or his dependants to undue financial harm in the future requires the payee and the court to be clairvoyant. Again, this is an impossible standard. A "fair and reasonable" or "best interest" standard would be much more appropriate and workable.

- G.S. §1-543.11(4) should be deleted altogether. Presumably, if the payee is going to court, then the payee has the advice of counsel regarding the transaction. Moreover, in light of the definition of independent professional advice, if this requirement remains, no deals will ever get done.

- G.S. §1-543.11(5)–After imposing all of the disclosure and court approval requirements on the parties, this section then gives ultimate veto power to the insurance company. Since insurance companies routinely include boilerplate anti-assignment and anti-encumbrance language in structured settlements (such provisions being disfavored as unlawful restraints on the alienation of property rights and often held to be unenforceable), the ultimate determination of whether a payee may access their own financial assets, by way of a loan or an assignment, is not left up to the consumer or the courts, rather it is left to the discretion of the insurance company. How can such a provision possibly be considered pro-consumer?

- Generally, the fact that consumers must provide personal, private, confidential and sometimes embarrassing financial information to insurance companies and file it in public records in court, seems to be very anti-consumer.

STRUCTURED SETTLEMENTS & HB 853/SB 746
CUTTING THROUGH THE DEMAGOGUERY

Summary: Structured settlement purchasers provide a valuable service to individuals that originally choose a structured settlement instead of a lump sum and now wish to alter the timing of some or all of their payments. The vast, vast majority of structured settlement recipients are employed and perfectly capable of deciding what is best for them financially. They had the right to choose a lump sum at the time of settlement and should continue to have the right to choose how they get their money. HB 853/SB 746 eliminates citizens' rights to choose what to do with their money.

Myth Structured settlements are used to provide for the long term care of seriously injured people.

Reality: Over 85% of structured settlement recipients are gainfully employed or capable of working and do not suffer from a long term disability.

The average size of a structured settlement is only $75,000. This is hardly enough to provide for the long term care of a critically injured person.

Myth: Structured settlements were intended to prevent people from quickly dissipating their awards.

Reality: The vast majority of people had the choice of a lump sum or a structured settlement at the time of settlement and they chose a structured settlement.

HB 853/SB 746 takes away freedom of choice. As we are all aware, changing life circumstances alter one's financial needs. The freedom to contract to meet those needs is a fundamental right. Just because a person elected not to take a lump sum at the time of settlement shouldn't mean they are forever restricted from so doing.

Myth: Claimants who sell a portion of the settlements squander the money.

Reality:
34% Use the money to buy or renovate a home
31% Pay off existing debts including tax liens and child support obligations[1]
14% Pay medical expenses
11% Use the funds to open or expand a business

Myth: Settlement Purchasers use high pressure sales tactics and usurious interest rates.

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[1]Settlement Purchasers require that tax liens, child support and alimony are paid. As a result, during the last two years over $9,000,000 in child support, alimony, tax liens and other debts have been paid.

Reality: Settlement Purchasers advertise and respond to in-bound phone calls. The claimant initiates the contact and can terminate the contract by simply saying they are not interested.

Settlement Purchasers insist that individuals seek legal and financial counsel before they sign a contract. Most contracts for sale of settlement payments contain a 3-day right of recission and all terms and conditions are fully disclosed in writing.

The discount rates charged by Settlement Purchasers are consistent with the rates of major credit card companies throughout the US and competition is driving discount rates down all the time.

Myth: IRC § 130 was adopted to encourage people to accept long term pay-outs of personal injury claims and the Treasury has so found.

Reality: IRC § 130 was passed at the behest of the insurance industry because it provides them a huge tax benefit. Treasury presented a more balanced view of the structured settlement industry stating

> "It could be argued that imposing a tax on the acquisition of the payment stream would only worsen the risk that the injured person would receive an excessively discounted value..." and "It could also be argued that it is not the function of the tax law to prevent injured persons or their legal representatives from transferring rights to payments. Arguably, consumer protection and similar regulation is more properly the role of the States than of the Federal Government."

Myth: Insurance companies wish to protect structured settlement claimants from themselves.

Reality: This is a total fallacy. Claimants have complete latitude to accept a lump sum or structured settlement at the outset.

Structured settlements are incredibly profitable for the insurance companies and the brokers that set them up (the NSSTA and its members).

Take it from them--one insurer's structured settlement manual says:

> "The primary objective in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."
>
> "Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."

The insurance industry does not like the fact that Settlement Purchasers are educating the public about the "time value of money" (the real value of the settlement they accepted).

Myth: H.R.'s exception for court approved hardships addresses the needs of those who really need access to their money.

Reality: There is no court procedure for obtaining such an order in 46 of the 50 sates.

To the extent that a petition can be brought before a court, the bill's standard of "extraordinary, unanticipated and imminent" will lead to a disparity of results amongst and between residents of the several states.

Myth: Settlement Purchasers oppose regulation.

Reality: The Settlement Purchase industry embraces reasonable regulation and recently sought to introduce such legislation in Illinois which was opposed by the NSSTA and the insurance industry. Settlement Purchasers have and will support reasonable regulation at the federal and state levels.

Myth: A non-assignment clause in a structured settlement should keep the claimant from borrowing money on the settlement.

Reality: This would change existing law and deprive the claimant the right to borrow money. N.C.G.S. 25-9-318(4) provides:

"A term in any contract debtor and an assigner is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest."

WHAT'S THIS FIGHT REALLY ALL ABOUT?

If It Is About Protecting North Carolina Consumers:

Why won't the insurance companies sit down and work out a true consumer protection bill?

Settlement Purchasers have supported and will support a law that provides:

- Full and complete disclosure;
- A five day right of recission;
- Court orders where the court determines what is "fair or reasonable" or "in the best interest" of the claimant;
- Court orders if a court or IRS revenue ruling determines that a transfer of structured settlement payments causes a genuine tax liability to the annuity issuer, settlement obligor or claimant.

Why do they insist on absolute veto power over the transaction?

Why have they picked a standard of review which is so onerous that virtually no one could achieve it?

- A standard that is higher than that needed to settle the claim of a minor;
- Higher than the standard applied to the adoption or custody of a child.

Why do they point to a federal bill as the stalking horse for the need for HB 853/SB 746 when they had the federal bill introduced?

Why don't they tell you that Settlement Purchasers have paid millions of dollars in back child support, and state and federal tax liens?

Why don't they tell you who gets hurt by HB 853/SB 746?

- Lower income people and minorities who don't have access to other forms of capital get hurt.
- Thousands of employees at hundreds of small business throughout the nation get hurt.
- People who won't be able to afford to buy a home, pay for school or improve their lives get hurt.

Why don't they tell you who really gets structured settlement payments?

- More than 85% of structured settlement recipients are not disabled and are gainfully employed.
- 92% of claimants are "satisfied" or "very satisfied" with the re-financing of their settlement which they accomplished with the help of Settlement Purchasers.
- The average person who re-finances a structured settlement is 33 years old, employed with a household income of nearly $25,000.
- More than 50% of structured settlements have a present value of $30,000 or less. *(Source: Best's Review - November 1998)*

Why do they contend that structured settlements are intended to prevent people from receiving a lump sum when more than 65% of all structured settlements are for lump sums paid at some arbitrary time in the future?

If It Is About Taxes:

Why do they hide the fact that opinions have been issued by Morrison & Foerster's national tax office, PriceWaterhouseCoopers, Wolf, Block, Schorr and Solis, the United States Court of Appeals and the IRS itself that there is no "tax issue".

Why do they hide the fact that the United States Court of Appeals for the Third Circuit has ruled on this issue?

> "The Haydens would have us conclude that Reliance would retroactively lose this (the § 130) exclusion if Ms. Hayden assigned her right to receive the periodic payments under the settlement agreement... The Haydens, however, do not cite, and our research has failed to reveal, any support for this novel proposition. We are therefore unpersuaded by the Haydens theory..."

Why can't they point to a single letter, rule, case or memorandum from any governmental entity which supports their contentions that there may be a tax problem?

Why don't they tell you that Allstate obtained a ruling from the IRS which allows them to offer lump sums in certain circumstances (IRS PLR 116384-97)?

Why do they fail to point out that the tax code clearly and unconditionally exempts from income payments received as compensation for personal injuries?

> IRC § 104 (a)(2) exempts from income "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;"

So What Is It Really All About:

It's about money!

Structured Settlements save the insurance industry billions of dollars in settlement costs.

- One insurer's structured settlement manual says:

  "The primary objective in expanding the use of structured settlements is to maximize their value as a tool to reduce both claim loss and expense costs."

  "Essentially, when a claimant has a reduced life expectancy and a substandard age rating has been obtained, the more life contingent benefits provided in the structure offer, the higher the savings on the claim."

- Ringler Associates, the country's largest structured settlement broker boasts:

  "Initially, the concept was used on large, catastrophic-injury cases. Today, claims as small as $5,000 are structured."

Insurers make billions more by investing the lump sum than they would otherwise pay an injured person and paying that person only a fraction of the interest they earn each year.

The Montgomery County Court in Maryland sure knows it:

> Excerpt of transcript Stone Street Capital v. Deborah L. Jackson, Civil No. 176131.
>
> THE COURT: Why is it, by the way, that traditionally these [structured settlement annuity contracts] are non-assignable?
>
> COUNSEL FOR STATE FARM: There are a lot of reasons. One is to protect the victim usually of personal injury. The whole reason for setting up these –
>
> THE COURT: Protect them from what?
>
> COUNSEL FOR STATE FARM: The whole reason for setting up these structured payments is so that they do not get a lump sum;

they do not get $300,000 Plaintiff up front. These people –

THE COURT: **No it is not. The reason for setting up these structured payments are so that the insurance companies can settle out cheaper.**

COUNSEL FOR STATE FARM: **That is one reason.**

THE COURT: All right, come on –

COUNSEL FOR STATE FARM: I am not going to deny that.

THE COURT: They are not looking out for a plaintiff in a personal injury case. Please.

COUNSEL FOR STATE FARM: **That is one reason that Your Honor has said. It is more cost effective for the insurance company –**

THE COURT: **That is one reason. That is the reason.**

COUNSEL FOR STATE FARM: **Okay.**

It's About Their Need to Keep a Secret:

- We demonstrate what the real value of a structured settlement is. This makes the insurers fearful that as injury victims become more educated about present values, they will demand lump sum settlements and hence cost the insurers money.
- They know what the corporate welfare provisions of the tax code known as IRC § 130 was adopted by Congress to facilitate settlements of catastrophically injured people who are in need of long term care (thalidomide babies and the like).
- They know that they have exploited and corrupted the laudable policy objectives underlying § 130 by settling every slip and fall, fender bender and garden variety tort claim with a structured settlement.
- They fear that if Congress gets wind of what they have been up to Congress may just reform § 130 and hence;
- They fear the light we shed on the market and their practices.

It's About Their Own Fear of Regulation:

Most insurance policies convey the following rights, but not insurance policies used by structured settlement companies. Most insurance products give you:

- the right to assign the proceeds;
- the right to take out a policy loan;
- the right to take cash out at policy maturity;
- the right to name and change a beneficiary;
- the right of the beneficiary to select a settlement option.

Yet with a structured settlement you get none of these rights!

It's About Greed:

Insurance carriers want this business for themselves.

- Allstate Insurance Company obtained a ruling from the IRS so that they could offer lump sums to beneficiaries of structured settlements!

- Who don't they tell you that insurance companies buy the bonds we create which are repaid by the settlement payments?

- The insurance industry knows that the services provided by Settlement Purchasers are valuable and highly sought after. They like the bonds we create and now want to control and monopolize the market for themselves.

- Why don't they mention the fact that HB 853/SB 746 will not affect Allstate or any insurance company commutation of a structured settlement?

***

Before you decide just ask yourself – What's it really all about?

HOUSE JUDICIARY I COMMITTEE

May 25, 1999

Agenda

Senate Bill 867 – Real Estate Licensure Law Changes
Senator Gulley

Senate Bill 1113 – Workers' Compensation/Medical Provider Contact
Senator Kerr

HOUSE JUDICIARY I COMMITTEE
May 25, 1999
Minutes

The House Judiciary I Committee met on Tuesday, May 25, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Ellis, Gardner, Insko, Miller, Moore, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney noted that Senator Cochrane had requested that her bill, Senate Bill 34 be removed from the agenda.

Senator Gulley was recognized to explain **Senate Bill 867, AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW**, (Attachment II). Senator Gulley stated that the bill was supported by the Real Estate Commission and would clarify that brokers who are licensed in other states must become licensed in North Carolina before engaging in real estate brokerage business in the state. The bill would also authorize the Real Estate Commission to require a "broker-in-charge" to supervise real estate sales persons. The bill would clarify that the Real Estate Commission has the authority to issue subpoenas when investigating alleged misconduct.

Additional explanation of the bill is outlined in a bill analysis prepared by Ms. Susan L. Hayes, Committee Counsel, (Attachment III).

Committee discussion followed.

Mr. Tom Miller, Legal Counsel, Real Estate Commission, responded to questions.

Representative Nesbit offered an amendment to change the effective date, (Attachment IV), and moved its adoption. The motion carried.

Representative Ellis moved that the bill, as amended, be given a favorable report.

Representative Nesbitt questioned the need for an amendment to address the requirement for notification, after the fact, of the subpoena to trust account records

Representative Ellis withdrew his motion.

The bill was displaced to allow for the drafting of an amendment.

Senator Kerr was recognized to explain **Senate Bill 1113, AN ACT RELATING TO EMPLOYER CONTACT WITH MEDICAL CARE PROVIDERS FOR CLAIMS UNDER THE WORKERS' COMPENSATION ACT**, (Attachment V). Senator Kerr stated that the bill would undo legislation that was passed in 1995 that mandated the Industrial Commission to adopt rules governing additional methods of oral and written communications between an employer paying compensation and a medical care provider for the employee. He said that the Commission held many hearings to attempt to work out the perceived problem with ex parte contact by the insurance companies or attorneys representing defendants and the claimant. He said that the lengthy process resulted in no consensus. It was agreed to strike the mandate for the adoption of rules and let the problem be handled on a case-by-case manner by the Industrial Commission

and the courts. The bill attempts to repeal the mandate. A bill analysis, prepared by Ms. Hayes, is attached, (Attachment VI)

Representative Miller asked if the bill was recommended by the Industrial Commission. He voiced concern that the rules had not been adopted by the Commission.

Mr. Alan Miles, representing the Industrial Commission, stated that the Commission was aware of the bill, and had no objection to it.

Mr. Charles Cromer, Academy of Trial Lawyers, commented briefly on the attempt by the Commission to adopt rules, but noted that they had been unable to do so.

Representative Miller again expressed frustration at the inability of the Industrial Commission to adopt rules as directed by the General Assembly. He moved that the bill be removed from consideration until the committee could hear from the Industrial Commission as to why rules have not been adopted.

Representative Thompson offered a substitute motion for a favorable report.

The Chairman ruled that Representative Thompson's motion was out of order.

Representative Miller withdrew his motion

Representative Thompson's motion for a favorable report was again before the committee. The motion carried, (Attachment VII).

Senate Bill 867 was again before the committee.

Representative Nesbitt offered an amendment, (Attachment VIII), requiring that notification be made regarding access to records, and moved its adoption. The amendment was adopted.

Representative Nesbitt moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment IX). A copy of the committee substitute is attached, (Attachment X).

Ms. Brenda Brown, New Hanover County Special Needs Task Force, was recognized to address the committee regarding **Senate Bill 34, AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES**. The bill had been scheduled to be heard at this meeting, but was removed from the agenda at the request of the sponsor. Ms. Brown spoke in support of the bill.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 25, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brenda "Ben" Brown	New Hanover County Special Needs Task Force
Tom Miller	NC DOJ
PHILLIP FISHER	NC REAL ESTATE COMMISSION
Scott Hammack	NCATL
Charles Cromer	ncatl
Bob Bird	NANC
John Phelps	NCLM
Judy Smith	NC DHHS - Aging
Karen Gottovi	NC Div. of Aging
Jim Blackburn	County Commissioners Assoc.
Lou Wilson	NCATTC 7.
Eric Tolbert	CCPS - Emergency Management
Steve Keene	NC Medical Society
Amy Jo Bain	NC Medical Society
Alan Miles	Bailey & Dixon LLP
Kirsten Mitchell	NyHRUG
Starla McKenney	NC DOT
Mike Flynn	NC State ASCCD
Mike Carpenter	NCHCA
Carl Sordelet	OSP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 867
Judiciary II Committee Substitute Adopted 4/28/99

Short Title: Real Estate Licensure Law Changes. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate brokers and real estate ~~salesmen.~~ salespersons.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker or real estate ~~salesman,~~ salesperson, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate ~~salesman~~ salesperson or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker or salesperson in this State."

Section 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salesperson engaged in real estate brokerage at a particular

real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule."

Section 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate ~~salesman~~ salesperson within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker."

Section 4. G.S. 93A-3(d) reads as rewritten:

"(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b)."

Section 5. G.S. 93A-4A is amended by adding a new subsection to read:

"(a1) In addition to the requirements of subsection (a) of this section, the Commission may require real estate brokers-in-charge to complete a special course of study, not to exceed six classroom hours every three years, in subjects prescribed by the Commission."

Section 6. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission shall have power to take disciplinary action. Upon its own ~~motion,~~ initiative, or on the ~~verified~~ complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of one or more of the following:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material ~~fact;~~ fact.

(2) Making any false promises of a character likely to influence, persuade, or ~~induce;~~ induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesmen,~~ salespersons, advertising or ~~otherwise;~~ otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she ~~acts;~~ acts.

(5) Accepting a commission or valuable consideration as a real estate ~~salesman~~ salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is ~~employed;~~ employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is ~~associated;~~ associated.

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to ~~others;~~ others.

(8) Being unworthy or incompetent to act as a real estate broker or ~~salesman~~ salesperson in a manner as to endanger the interest of the ~~public;~~ public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this ~~Chapter;~~ Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest ~~dealing;~~ dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of ~~law;~~ law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate ~~broker~~ licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest ~~accrued;~~ accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the ~~seller;~~ seller.

(14) Failing ~~as a broker~~, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was ~~disbursed; or~~ disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

Section 7. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.**

The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where a hearing before the Commission is pending for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution."

Section 8. G.S. 93A-17(a) reads as rewritten:

"(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or ~~salesman~~ salesperson licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or ~~salesman~~ salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than ~~one thousand five~~

~~hundred dollars ($1,500)~~ three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or ~~salesman~~ salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or ~~salesman~~ salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service."

Section 9. G.S. 93A-19(a) reads as rewritten:

"(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. ~~Within 30 days after service of the application, counsel~~ Counsel for the Commission and the judgment debtor may file responses ~~thereto~~ to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor shall waive his or her rights unless the absence is excused by the Commission."

Section 10. G.S. 93A-20 reads as rewritten:

"**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment."

Section 11. G.S. 93A-21 reads as rewritten:

"**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment;

(2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction; and

(3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate ~~twenty~~ fifty thousand dollars ~~($20,000)~~ ($50,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount of one thousand five hundred dollars ($1,500) or less, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee."

Section 12. G.S. 93A-36(a) reads as rewritten:

"(a) Before the Commission shall issue a license the applicant shall execute a bond in the sum of five thousand dollars ($5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's school acting by and through its officers and agents with any student who desires to enter such school and to take any courses offered therein and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a license from the Commission to open and operate a private real estate school or to provide the instruction agreed to or contracted for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each branch of a licensed school."

Section 13. G.S. 93A-41(2) reads as rewritten:

"(2) 'Developer' means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the ~~developer;~~ developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;"

Section 14. G.S. 93A-41(9) reads as rewritten:

"(9) 'Time share' means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, ~~or~~ vacation ~~bond;~~ bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;"

Section 15. G.S. 93A-52(d) reads as rewritten:

"(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

Section 16. This act shall have no effect on any cases pending in the courts in this State.

Section 17. This act becomes effective August 1, 1999.

SENATE BILL 867:
Real Estate Licensure Law Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Gulley
Date:	May 25, 1999	**Summary by:**	Susan L. Hayes,
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 867 makes various changes to the real estate licensure laws.***

BILL ANALYSIS: **Section** 1 amends G.S. 93A-1 to require all real estate brokers or salespersons to obtain a NC real estate license, even if the person or entity is licensed in another state and is affiliated with a licensed broker or salesperson in this State.

Section 2 & 3 define the term "broker-in-charge" as a broker who has responsibility for the supervision of real estate salespersons at a particular office.

Section 4 authorizes the Real Estate Commission to delegate to the Commission staff the Commission's authority and duties, except for it's authority to make rules or duty to act as a hearing panel.

Section 5 allows the Commission to require a broker-in-charge to complete a special course of study not to exceed 6 hours every 3 years.

Section 6 makes various grammatical and technical changes to G.S. 93A-6(a).

Section 7 creates a new G.S. 93A-6.1 which gives the Commission subpoena power for witnesses and documents in matters heard by the Commission and authorizes the Commission to apply to the superior court in the county where the matter is being heard for enforcement of the subpoena. The Commission is exempted from the requirements of Chapter 53B, The North Carolina Financial Privacy Act, with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution.

Section 8 allows persons with claims up to $3000 for a licensee's conversion of trust fund money to file notice of the lawsuit with the Commission within 60 days of the completion of the lawsuit, instead of within 60 days of the commencement of the lawsuit. The current law allows this filing period for claims up to $1500.

Section 9 provides that failure to appear at a hearing for recovery from the Real Estate Recovery Fund, after receiving notice of the hearing, shall result in the waiver of rights unless the absence is excused by the Commission. This section also deletes the requirement that responses to the application for recovery be filed within 30 days of service.

Section 10 allows the Commission to waive procedural defects in an application for payment from the Real Estate Recovery Fund, if the claim appears otherwise meritorious.

Section 11 increases the limits on payments from the Real Estate Recovery Fund from $10,000 in all cases to $25,000 per transaction, $25,000 per licensee per year, and $50,000 per licensee. A person who files an application for payment after these limits have been reached shall not be entitled to payment and may not seek judicial review except for abuse of discretion.

Section 12 provides that a separate bond shall not be required for each branch of a licensed real estate school.

Section 13 amends the definition of "developer" under the time share provisions to include a person who creates a time share or time share project or program or purchases a time share for purposes of resale, but not a person who purchases a time share for their own occupancy, use and enjoyment.

Section 14 amends the definition of "time share" to include a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use.

Section 15 provides that the fees paid for application to register a time share are nonrefundable.

Section 16 provides that none of the changes in this act shall have any effect on pending cases.

This act is effective August 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT IV**

(Please type or use ballpoint pen) Neshitt adopted

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 867 _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Neshitt
Sen.)

1 moves to amend the bill on page 8, line 21

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "August 1, 1999." and inserting "October 1, 1999."

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SIGNED Neshitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1113
Judiciary II Committee Substitute Adopted 4/28/99

Short Title: Workers' Comp./Medical Provider Contact. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO EMPLOYER CONTACT WITH MEDICAL CARE PROVIDERS FOR CLAIMS UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. ~~The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject

to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

SENATE BILL 1113:
Workers' Comp./Medical Provider Contact

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Kerr
Date:	May 25, 1999	**Summary by:**	Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***Senate Bill 1113 amends G.S. 97-25 in the workers' compensation statutes to delete the language requiring the Industrial Commission to adopt rules governing additional methods of oral and written communications between an employer paying compensation and a medical care provider for the employee. This bill is effective when it becomes law.***

S1113-SMSA-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 1113 A BILL TO BE ENTITLED AN ACT RELATING TO EMPLOYER CONTACT WITH MEDICAL CARE PROVIDERS FOR CLAIMS UNDER THE WORKERS' COMPENSATION 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 **ATTACHMENT VIII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 867 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Nesbitt

moves to amend the bill on page 4, line 11

( ) WHICH CHANGES THE TITLE

by inserting at the beginning of the line "(a)"

And on page 4, line 28

by rewriting the line to read:

"action pending in superior court.

(b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. Notwithstanding that exemption, the Commission shall serve pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure or by certified mail to the licensee's last known address a copy of the subpoena and notice that the records have been furnished. Service of the subpoena and notice on the licensee shall be made within 10 days following service of the subpoena on the financial institution holding the trust account records."

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 867 A BILL TO BE ENTITLED AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 867
Judiciary II Committee Substitute Adopted 4/28/99
Proposed House Committee Substitute S867-PCS1746-SA

Short Title: Real Estate Licensure Law Changes. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate brokers and real estate ~~salesmen.~~ salespersons.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker or real estate ~~salesman,~~ salesperson, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate ~~salesman~~ salesperson or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker or salesperson in this State."

Section 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salesperson engaged in real estate brokerage at a particular

real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule."

Section 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate ~~salesman~~ salesperson within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker."

Section 4. G.S. 93A-3(d) reads as rewritten:

"(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b)."

Section 5. G.S. 93A-4A is amended by adding a new subsection to read:

"(a1) In addition to the requirements of subsection (a) of this section, the Commission may require real estate brokers-in-charge to complete a special course of study, not to exceed six classroom hours every three years, in subjects prescribed by the Commission."

Section 6. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission shall have power to take disciplinary action. Upon its own ~~motion,~~ initiative, or on the ~~verified~~ complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of one or more of the following:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material ~~fact;~~ fact.

(2) Making any false promises of a character likely to influence, persuade, or ~~induce;~~ induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesmen,~~ salespersons, advertising or ~~otherwise;~~ otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she ~~acts;~~ acts.

(5) Accepting a commission or valuable consideration as a real estate ~~salesman~~ salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is ~~employed;~~ employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is ~~associated;~~ associated.

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to ~~others;~~ others.

(8) Being unworthy or incompetent to act as a real estate broker or ~~salesman~~ salesperson in a manner as to endanger the interest of the ~~public;~~ public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this ~~Chapter;~~ Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest ~~dealing;~~ dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of ~~law;~~ law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate ~~broker~~ licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest ~~accrued;~~ accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the ~~seller;~~ seller.

(14) Failing ~~as a broker~~, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was ~~disbursed; or~~ disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

Section 7. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.**

(a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where a hearing before the Commission is pending for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. Notwithstanding that exemption, the Commission shall serve, pursuant to G.S. 1A-1, Rule 4(j) of the N.C. Rules of Civil Procedure or by certified mail to the licensee's last known address, a copy of the subpoena and notice that the records have been furnished. Service of the subpoena and notice on the licensee shall be made within 10 days following service of the subpoena on the financial institution holding the trust account records."

Section 8. G.S. 93A-17(a) reads as rewritten:

"(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or ~~salesman~~ salesperson licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or ~~salesman~~ salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than ~~one thousand five hundred dollars ($1,500)~~ three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or ~~salesman~~ salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or ~~salesman~~ salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service."

Section 9. G.S. 93A-19(a) reads as rewritten:

"(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. ~~Within 30 days after service of the application, counsel~~ Counsel for the Commission and the judgment debtor may file responses ~~thereto~~ to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or

transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor shall waive his or her rights unless the absence is excused by the Commission."

Section 10. G.S. 93A-20 reads as rewritten:

"**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment."

Section 11. G.S. 93A-21 reads as rewritten:

"**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment;

(2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction; and

(3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate ~~twenty~~ fifty thousand dollars ~~($20,000)~~ ($50,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all

claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount of one thousand five hundred dollars ($1,500) or less, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee."

Section 12. G.S. 93A-36(a) reads as rewritten:

"(a) Before the Commission shall issue a license the applicant shall execute a bond in the sum of five thousand dollars ($5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's school acting by and through its officers and agents with any student who desires to enter such school and to take any courses offered therein and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a license from the Commission to open and operate a private real estate school or to provide the instruction agreed to or contracted for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each branch of a licensed school."

Section 13. G.S. 93A-41(2) reads as rewritten:

"(2) 'Developer' means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the ~~developer;~~ developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;"

Section 14. G.S. 93A-41(9) reads as rewritten:

"(9) 'Time share' means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a

specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, ~~or~~ vacation ~~bond;~~ bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;"

Section 15. G.S. 93A-52(d) reads as rewritten:

"(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

Section 16. This act shall have no effect on any cases pending in the courts in this State.

Section 17. This act becomes effective October 1, 1999.

HOUSE JUDICIARY I COMMITTEE

May 27, 1999

Agenda

House Bill 1131 – Raise State Tort Claims Cap
Representatives Walend and Nesbitt

Senate Bill 297 – Limited Partnership Law Changes
Senator Clodfelter

Senate Bill 888 – Drug Law Amendments
Senator Cooper

Senate Bill 995 – Police Peer Counselor Privilege
Senator Odom

HOUSE JUDICIARY I COMMITTEE
May 27, 1999
Minutes

The House Judiciary I Committee met on Thursday, May 27, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Vice Chairman Martin Nesbitt, and the following members were present: Representatives Blue, Clary, Ellis, Gardner, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Representative Nesbitt announced that a proposed committee substitute (Attachment II for **House Bill 1131, AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT**, (Attachment III), had been prepared and distributed to the members of the committee. The original bill had been discussed during the April 22 and 23, 1999 meetings of the committee. A fiscal note was also distributed, (Attachment IV).

Ms. Susan L. Hayes, Committee Counsel, was recognized to explain the changes that had been made in the committee substitute. She said that the effective date had been changed to reflect the concerns expressed by the Attorney General's office regarding covering judgments and settlements. The committee substitute also raised the amount of counterclaim by the State.

Representative Walend was recognized and briefly reviewed the bill.

Representative Ellis stated that this bill is a great step, and noted that it could be further improved by establishing a board that would have the authority to approve larger settlements. He said that a citizen of the state should not become a victim of the state.

Representative Walend stated that it was her intent to introduce a resolution for a study commission on state liability and immunity.

Representative Ellis moved a favorable report as to the committee substitute and an unfavorable report as to the original bill, and that the bill be re-referred to the Committee on Appropriations. The motion carried, (Attachment V).

The next bill to be considered by the committee was **Senate Bill 888, AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES**, (Attachment VI).

A proposed committee substitute was distributed, (Attachment VII) and Representative Blue moved adoption for the purpose of discussion. The motion carried.

Mr. John Waters, State Bureau of Investigation, was recognized to explain the bill in the absence of Senator Cooper. Mr. Waters stated that the bill changes the way that punishment is calculated by moving away from dosage units to grams of amphetamine or methamphetamine. The bill would raise the punishment level for possession level for methamphetamine and amphetamine from a Class 1 misdeameanor to a Class I felony. The bill also adds several precursor chemicals to the present list. The bill also would require that when a person is convicted of an offense involving the manufacturing of a controlled substance, the court must order the person to make restitution to the law enforcement agency for the cost of the clean up of any laboratory. Additional explanation may be found in the bill analysis, prepared by Ms. Hayes, (Attachment VIII).

Representative Thompson asked if there was a fiscal note for the bill.

Ms. Hayes replied that there was a fiscal note for Sections 1 and 2 of the bill, but that Section 3 had just been added and the fiscal note did not reflect the provisions contained in Section 3. She added that it was her opinion that there would be some fiscal impact.

Representative Blue presided over the remaining portion of the meeting.

Committee discussion followed regarding precursor chemicals.

Representative Blue stated that no action would be taken pending a fiscal note for the bill.

The meeting was adjourned at 10:40.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 27, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Murray	NC NA
Jeff Fluck	NC PBA
Bernard Allen	SOS
Nicole Desenberry	SBE
Amy Bullard	SBE
LE Harlee	NC Bar Association
Michael L. Pope	SOS
Charlene Dawkins	SOS
Matt Osborne	AOC
Jeb Alley	2DA PA
Duncan Buell	Attorney
Tommy Harris	NC ACPA Lobbyist
Bill Scoggin	NC BAR ASSOC.
Jim Ahler	NCACPA
Sam Johnson	ATTY.
Dick Taylor	NCAOC
Gary Harris	NCPMA
Doug Howey	"
Cam Cover	BBMHL
Stella McKinney	NC DOT
Melissa Lovell	DOJ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1131*
Proposed House Committee Substitute H1131-PCSSA-001

Short Title: Raise State Tort Claims Cap. (Public)

Sponsors:

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including

medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) cumulatively to all claimants on account of injury and damage to any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

Section 2. G.S. 143-291.3 reads as rewritten:

"§ 143-291.3. Counterclaims by State.

The filing of a claim under this Article shall constitute consent by the plaintiff(s) to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) or less ~~which~~ that may be filed on behalf of a State department, institution, or agency or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the Clerk of the Superior Court of the county wherein the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of such a counterclaim."

Section 3. G.S. 143-299.2 reads as rewritten:

"§ 143-299.2. Limitation on payments by the State.

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be ~~one hundred fifty thousand dollars ($150,000),~~ three hundred thousand dollars ($300,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

Section 4. This act is effective when it becomes law and applies to all judgments entered and all settlements finalized on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1131*

Short Title: Raise State Tort Claims Cap. (Public)

Sponsors: Representatives Walend, Nesbitt (Primary Sponsors); Barefoot, Cansler, Church, Culp, Luebke, and Sherrill.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) cumulatively to all claimants on account of injury and damage to

any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

Section 2. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be ~~one hundred fifty thousand dollars ($150,000),~~ three hundred thousand dollars ($300,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

Section 3. This act is effective when it becomes law and applies to judgments entered on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1131 (=Senate Bill 1033) Raise Tort Claims Cap

SHORT TITLE: Raise Tort Claims Cap

SPONSOR(S): Representatives. Trudi Walend and Martin Nesbitt; Senator Robert Carpenter

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	NONE				
EXPENDITURES					
Claims Paid through Industrial Comm Action	$750,000	$750,000	$750,000	$750,000	$750,000
Premium Increase to Retrospective Rating Plan					
Highway Fund	$917,140	$917,140	$917,140	$917,140	$917,140
General Fund	$664,136	$664,136	$664,136	$664,136	$664,136
TOTAL	$1,581,276	$1,581,276	$1,581,276	$1,581,276	$1,581,276

POSITIONS: NONE

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice (defends State) ; Industrial Commission (hears cases) ; All State Departments who participate in NC Retrospective Rating Adjustment Fund are affected (insurance cost increase); all State agencies are potentially affected ; Administrative Office of the Courts.

EFFECTIVE DATE: When it becomes law; applies to judgements entered on or after date of enactment

BILL SUMMARY: *TO INCREASE THE STATE TORT CLAIM LIMIT.* Amends GS 143-291(a) to increase limit on claims under State Tort Claims Act from $150,000 to $300,000. Makes conforming amendment to GS 143-299.2.

ASSUMPTIONS AND METHODOLOGY:

Under current law, the maximum amount which the State may pay on account of injury and damage to any one person under the Tort Claims Act is $150,000. This Bill would raise that limit to $300,000.

There are two kinds of fiscal impact from this Bill. The first impact relates to claims awarded by the Industrial Commission..

Claims Through Industrial Commission

There are relatively few cases that would be directly affected by this change in maximum. Because the $150,000 cap is in place, few parties file claims for more than $150,000 and the Industrial Commission does not keep records of claims above this amount.

In Fiscal Year 1996-7, there were 47 claims filed for $100,000 or more; 4 claims were paid at $150,000. In 1997-8 there were 32 claims filed for $100,000 or more and 6 claims were paid at $150,000 (out of a total of 660 claims filed). Using an average of the prior 2 years, we assume there will be 5 cases per year through the Industrial Commission for whom the current ceiling is binding. Based on discussions with the Industrial Commission (and the observation that of all the claims granted where the request was over $100,000, the ceiling amount was paid) , we also assume these would be serious cases (e.g. death cases) where the ceiling will be binding on the judgement amount. Based on 5 cases and $150,000 additional liability from doubling the ceiling, the cost to the State as a whole would be $750,000

Claims Involving State Vehicles

In addition, Torts involving state owned vehicles (Highway Patrol, Department of Transportation, Universities, State Motor Pool) are handled through the Department of Insurance. The North Carolina Retrospective Rating Adjustment Fund is a self-insuring fund to cover incidents related to all rolling stock—35,000 vehicles ranging from lawnmowers to tanks. DOI contracts with Travelers Insurance to administer the program. They advise the State on the amount required for the fund and that cost is shared among participating agencies based on their number of vehicles. Claims are paid from this fund rather than from participating agencies. The State also purchases excess insurance coverage for particularly large claims (out-of-state claims or multi-party accidents). The total cost of this program in 1998-99 is $8.3 Million.

The Department of Insurance obtained from Travelers an analysis of the increase in funds required if the Tort Claims ceiling is raised from $150,000 to $300,000. Assuming the number of incidents remains the same but that the average claim would increase from $3,350 to $3,864 (16%), contributions to the Fund would need to increase by $1,581,276. This increase would be shared among participating agencies. For instance, Motor Fleet Management/Department of Administration pays 25% of the premium, Community Colleges combined pay .5%, EHNR pays

7.3%, the Universities pay 10.15%, Highway Patrol pays 9%, DOT Highway Division pays 33%. Some fee-supported entities (Ports Authority) are also included.

We note that the incidence of Tort Claims is completely unpredictable; the number on page 1 is an approximation based on the past 2 years and the assumption that claims that were bound by the current ceiling will justify a payment at the new ceiling level. The estimated impact on premiums paid by state agencies to the Retrospective Rating Adjustment Fund is, however, based on actuarial calculations and the history of claims.

Additional Potential Costs

There are areas of potential additional cost that are not included in the $750,000 liability figure. Doubling the ceiling could increase the volume of claims and the rigor with which claims are pursued. This would affect the State's costs in handling Tort Claims (expert witnesses, depositions, transcripts). While this would also affect the workload of the Department of Justice and the Industrial Commission, there is no evidence at this point that such an increase could not be absorbed within existing resources.

Under current law GS 143-300.2-6, the limit on the amount the state might pay in a suit against an employee of the State is tied to the limit under the Tort Claims Act. Raising the ceiling from $150,000 to $300,000 will automatically raise the ceiling in 143-300.6 as well, further increasing the State's potential liability.

Application to Pending Cases

Under this Bill, the new ceiling will apply to judgements rendered after enactment. That means it will apply to some Torts that have already occurred but where the case had not yet been closed.. If there are some high dollar claims in process, this provision will increase the first years' fiscal impact beyond where it would be if the new ceiling only applied to incidents on or after date of enactment. Over time, however, this aspect of the Bill will not affect the ongoing cost.

There are currently 12 claims over $100,000 pending through the Retrospective Rating Adjustment Program, some dating back as far as 1994. Because they are open claims with potential for jury trials, the final judgement could be affected by the ceiling change. Based on this, the additional cost of applying this change to pending cases could cost an extra $1.8 Million (12 * $150,000) in the first couple of years.

Impact on Small Agencies

State Agencies other than the Department of Public Instruction pay Tort Claims judgement out of available funds. Because there is no expected level of Tort Claims judgements each year, it is not feasible to budget for that expenses. Smaller Departments sometimes have difficulty securing the necessary funds under the current limit; the increased limit would exacerbate this problem if any of the affected judgements relate to those agencies with lower lapsed salary balances. Even for a large agency such as the Department of Transportation, several $300,000 claims in one year, as may happen with the new ceiling applying to incidents that have already occurred, could be problematic.

Judicial System

Although some tort claims against the state are heard initially in superior court, and court appeals from administrative decisions are available, the Judicial System does not anticipate a major fiscal impact from this bill on court workload. It is possible that the increase in allowable damages could lead to more appeals and/or increase the complexity of some cases but they expect that even with a change in the amount of the ceiling, the same cases will be filed and the same major issues will be litigated .

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Elisa Wolper

APPROVED BY: Tom Covington



DATE: Tuesday, May 18, 1999

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1131 A BILL TO BE ENTITLED AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT.

☐ 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

S 1

SENATE BILL 888

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~
(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for

an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be

sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or

amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~ Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or

any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund; however, if the analysis was performed by the State Bureau of Investigation Crime Laboratory the funds shall be deposited into the Department of Justice Special Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. Section 1 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-001

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund; however, if the analysis was performed by the State Bureau of Investigation Crime Laboratory the funds shall be deposited into the Department of Justice Special Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name,

chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.

9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.

or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include

one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence

of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and

32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. Sections 1 and 3 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 888:
Drug Law Amendments

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Cooper
Date:	May 27, 1999	**Summary by:**	Susan L. Hayes
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 888 makes various changes to the laws regarding controlled substances.***

BILL ANALYSIS: Section 1 makes various changes to G.S. 90-95 as follows:

- Raises possession of methamphetamine and amphetamine from a Class 1 misdemeanor to a Class I felony.
- Adds several substances to the list of immediate precursor chemicals.
- Changes the crime of trafficking in amphetamine to depend on the amount of amphetamine possessed in terms of grams rather than dosage units.
- Increases the punishment for trafficking in methamphetamines or amphetamines if a person sells, manufactures, delivers, transports, or possesses 28 grams to 200 grams from a Class G felony to a Class F felony with a minimum of 70 months and a maximum of 84 months; 200 grams to 400 grams from a Class F felony to a Class E felony with a minimum of 90 months and a maximum of 117 months; 400 grams or more from a Class D felony to a Class C felony with a minimum of 225 months and a maximum of 279 months. These are comparatively the same punishment levels as trafficking in opium or heroin

Section 2 amends G.S. 90-95.3 to provide that restitution paid for the cost of analyzing a drug sample shall be deposited in the Department of Justice Special Fund, instead of the General Fund, when the analysis is performed by the SBI Crime Laboratory. Language is added to require that when a person is convicted of an offense involving the manufacturing of a controlled substance the court MUST order the person to make restitution to the law enforcement agency for the actual cost of the clean up of any clandestine laboratory.

EFFECTIVE DATE: The changes increasing the drug offense penalties are effective December 1, 1999 and apply to offenses committed on or after that date. The changes regarding restitution to the SBI and for cleanup of a clandestine laboratory are effective when they become law.

S888-SMSA-001

HOUSE JUDICIARY I COMMITTEE

June 1, 1999

Agenda

Senate Bill 34 - **Emergency Shelter/Health Facilities Immunity**
Senator Cochrane

Senate Bill 288 – **Unsolicited Electronic Bulk Mail**
Senator Reeves

Senate Bill 297 – **Limited Partnership Law Changes**
Senator Clodfelter

Senate Bill 888 – **Drug Law Amendments**
Senator Cooper

Senate Bill 1074 – **Year 2000 Consumer Protection Act**
Senator Reeves

HOUSE JUDICIARY I COMMITTEE
June 1, 1999
Minutes

The House Judiciary I Committee met on Tuesday, June 1, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Vice Chairman Martin Nesbitt, and the following members were present: Representatives Hackney, Alexander, Blue, Ellis, Insko, Miller, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Senator Reeves was recognized to continue the discussion of **Senate Bill 288, AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS STATE**, (Attachment II). The bill was explained during the May 11, 1999 meeting of the committee. A copy of a bill analysis, prepared by Ms. Brenda Carter, Staff Attorney, and Ms. Susan L. Hayes, Committee Counsel is attached, (Attachment III). Senator Reeves distributed a proposed committee substitute, (Attachment IV).

Representative Ellis moved that the proposed committee substitute be adopted for discussion. The motion carried.

Ms. Hayes was recognized to explain the committee substitute. She pointed out some technical changes that were made regarding the definition of "spam." She said that the words "with the intent to deceive or defraud the recipient" had been added to the language on page 4, line 4 of the bill. Senator Reeves noted that this language comes directly from the leading federal court case dealing with this issue. Ms. Hayes stated that the other change was on page 4, line 24, where the offense is lowered from a Class G felony to a Class I felony.

Following committee discussion, Representative Alexander moved that the House committee substitute be given a favorable report and that the original bill be given an unfavorable report. The motion carried, (Attachment V).

Senator Cochrane was recognized to explain **Senate Bill 34, AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES,** (Attachment VI). The bill would provide immunity from liability for health care facilities, home care agencies, and adult care homes when care is rendered during a declaration of disaster or emergency at the request of an emergency management agency, whether or not the facility is compensated. The bill also provides for a waiver of rules. A copy of a bill analysis prepared by O. Walker Reagan, Staff Attorney, and Ms. Hayes is attached, (Attachment VII).

Representative Ellis expressed concern regarding "for profit" situations as opposed to "compensation for cost." Senator Cochrane stated that the only compensation that would be offered would be for food.

Mr. Eric Tolbert, Director, Emergency Management Division, commented briefly on the bill, and responded to questions.

Representative Nesbitt asked for clarification regarding immunity. He asked if the immunity would roll over to a facilities' normal course of business, or apply only apply to those people who might be brought into a facility during a time of disaster.

Senator Cochrane replied that the bill was drafted in a manner to attempt to have the immunity apply only to those people brought in during a disaster.

Representative Nesbitt stated that the bill did not appear to apply only to those people brought in during disasters.

Ms. Hayes stated that the bill had limited the liability as much as possible. She also noted that the facility would only give shelter to people who need the types of services that the facility offered.

Representative Miller asked that staff identify the parameters of "individuals" on page 1, line 13 of the bill regarding compensation for receiving services.

Representative Nesbitt stated that the bill would be carried over to a later meeting to allow for staff to address pending questions regarding compensation.

The meeting was adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 1 , 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Jane Davis	Division of Aging
Karen Bottori	Div. of Aging
Ben Brown	NHC Emergency Mgmt. Special Needs
Leah Windley	Visitor
Stacy Flannery	NCHCFA
Jim Ahler	NCACPA
David Simmons	20A, PA
Harriet Worley	
[illegible] Allen	SOS
Jim Blackburn	Assoc. County Commissions
[illegible] Page	SOS
Charlene Durkins	SOS
[illegible] Sykes	ElectriCities
[illegible] Poole	DOJ
[illegible]	AT&T
Bill Scogin	NC BAR Assoc.
John Watters	NC Attorney General
Lisa Reyes	THE INSIDER
P. Bly Hall	General Statutes Commission
Cam Green	BPMHL
Cindy Ellen	NCRMA
Payne Mayhew	[illegible]
Hugh Tilson	NCHA
[illegible] Bain	NC Medical Society
Stephen W. Keene	NC Medical Society
[illegible] Cramer	NCATL
Ballard Everett	—

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
LE Hartsell	NC Bar Association
[illegible]	NCFJS
Melissa Lovell	DOJ
Ann Case	NCRMA
Deborah Ross	ACLU
Chuck Cagg	ACLU
Walter Church	Member Gen Assembly

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 288
Information Technology Committee Substitute Adopted 4/22/99
Third Edition Engrossed 4/26/99

Short Title: Unsolicited Comm. Elec. Bulk Mail. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"**§ 1-75.4. Personal jurisdiction, grounds for generally.**

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

. . .

(4) Local Injury; Foreign Act. -- In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:

a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; ~~or~~

b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of ~~trade.~~ trade; or

c. 'Spam,' unsolicited bulk commercial electronic mail, was sent into or within this State by the defendant using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail."

Section 2. G.S. 14-453 reads as rewritten:

"**§ 14-453. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Access" means to instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, computer system, or computer network.

(1a) "Authorization" means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(1b) "Commercial electronic mail" means messages sent and received electronically consisting of commercial advertising material, the principal purpose of which is to promote the for-profit sale or lease of goods or services to the recipient.

(2) "Computer" means an internally programmed, automatic device that performs data processing or telephone switching.

(3) "Computer network" means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers or telephone switching equipment.

(4) "Computer program" means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.

(4a) "Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection with any of these services.

(5) "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer, computer system, or computer network.

(6) "Computer system" means at least one computer together with a set of related, connected, or unconnected peripheral devices.

(6a) "Data" means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form including, but not limited to, computer printouts, magnetic storage media, and punch cards, or may be stored internally in the memory of a computer.

(6b) "Electronic mail service provider" means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or receive electronic mail.

(7) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security, or any electronic data processing representation thereof.

(8) "Property" includes financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

(8a) "Resource" includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.

(9) "Services" includes computer time, data processing and storage functions.

(10) "Spam" includes unsolicited bulk commercial electronic mail, sent by a person using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail.

(11) "Unsolicited" means not addressed to a recipient with whom the initiator has an existing business or personal relationship and not sent at the request of, or with the express consent of, the recipient."

Section 3. Article 60 of Chapter 14 of the General Statues is amended by adding a new section to read:

"**§ 14-458. Computer trespass; penalty; damages.**

(a) It shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

(2) Cause a computer to malfunction, regardless of how long the malfunction persists.

(3) Alter or erase any computer data, computer programs, or computer software.

(4) Cause physical injury to the property of another.

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(b) Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another, and the damage is valued at less than two thousand five hundred dollars ($2,500) caused by the person's act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at two thousand five hundred dollars ($2,500) or more, caused by the person's act in violation of this section, the offense shall be punished as a Class G felony.

(c) Any person whose property or person is injured by reason of a violation of this section may sue for and recover for any damages sustained and the costs of the suit. Without limiting the general of the term, "damages" shall include loss of profits. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees, and may elect, in lieu of actual damages, to recover the lesser of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day. The injured person shall not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk commercial electronic mail over its computer network. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the greater of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day.

(d) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. 1-75.4(13)."

Section 4. This act becomes effective October 1, 1999. Section 3 of the act applies to offenses occurring on or after October 1, 1999.

SENATE BILL 288:
Unsolicited Electronic Bulk Mail

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Reeves
Date:	June 1, 1999	**Summary by:**	Brenda J. Carter, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	S288-PCSSA-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 288 creates the criminal offense of "computer trespass", provides for a civil cause of action for damages resulting from "computer trespass" and makes transmitting unsolicited bulk electronic mail (spamming) to or through a computer network located in this State grounds for personal jurisdiction over a defendant.***

CURRENT LAW: In order for the court to exercise personal jurisdiction over a defendant, the grounds for such jurisdiction must existence in accordance with G.S. 1-75.4 and the defendant must be given notice by service of process in accordance with the provisions of Rule 4 (j) or 4 (j1). Rule 4(j) deals with the manner in which the court's jurisdiction may be exercised and sets out a number of methods of service for various circumstances. Rule 4(j1) sets out the requirements for service by publication on a party that cannot otherwise be served. A prerequisite to the court's exercise of personal jurisdiction is that the court first have jurisdiction of the subject matter of the claim. G.S. 1-75.4 provides that a court having jurisdiction of the subject matter has jurisdiction over a person who has been properly served under specified circumstances, including any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction, and any action claiming injury to property within this State arising out of an act or omission outside this State by the defendant.

BILL ANALYSIS: Section 1 of the bill amends the statute which sets out grounds for a N.C. court's personal jurisdiction over an out-of-state defendant. It provides that the court has jurisdiction when there is injury to property within this State arising out of an act committed outside this State by the defendant, and at the time of the injury the defendant was sending unsolicited bulk e-mail (commonly known as "spamming") in contravention of an electronic mail service provider's policies.

Section 2 of the bill amends the definition section of Article 60 of Chapter 14 of the General Statutes (Computer-Related Crime), by specifically defining "commercial electronic mail', "computer services", "electronic mail service provider", and "unsolicited".

Section 3 of the bill creates the criminal offense of computer trespass. The offense occurs when a person uses a computer or computer network without authority *and* with the intent to interrupt or disable a computer or computer network, cause a malfunction, alter or erase date, cause injury to another person's property, unlawfully copy data, or falsify e-mail information in connection with the transmission of unsolicited bulk e-mail. Computer trespass would generally be punishable as a Class 3 misdemeanor where there is no property damage. Assuming a person has no prior convictions, a Class 3 misdemeanor offense is punishable by 1-10 days community punishment. Community punishment may consist of a fine only; the maximum fine for a Class 3 misdemeanor is $200. The punishment for computer trespass is increased where there is damage to the property of another.

If there is damage to the property of another valued at less than $2500 caused by the person's violation of the statute, the offense is a Class 1 misdemeanor. Assuming a person has no prior convictions, a Class 1 misdemeanor offense is punishable by 1-45 days community punishment. Community punishment may consist of a fine only; the amount of the fine is in the discretion of the court.

If there is damage to the property of another valued at $2500 or more caused by the person's violation of the statute, the offense is a Class I felony. Assuming a person has no prior convictions, the minimum presumptive sentence for a Class I felony is 4-6 months community punishment.

Section 4 provides for a civil cause of action and allows any person whose property is injured by computer trespass to sue for and recover any damages sustained along with the costs of the suit. If the injury arises from the transmission of unsolicited bulk e-mail, the injured person other than an e-mail service provider may recover attorneys' fees and in lieu of actual damages may recover ***the lesser of*** $25,000 per day or $10 for each piece of unsolicited bulk e-mail sent in violation of the statute. The injured person has no cause of action against the e-mail service provider who merely transmits the unsolicited bulk e-mail over its network. The injured e-mail service provider may recover attorneys' fees and in lieu of actual damages may recover ***the greater of*** $25,000 per day or $10 for each piece of unsolicited bulk e-mail sent in violation of the statute.

Any civil action must be commenced within one year, and jurisdiction may be had over an out-of-state defendant pursuant to Section 1 of the bill.

The act would become effective December 1, 1999. Section 3 of the act applies to offenses occurring on or after December 1, 1999. Section 4 of the act applies to violations of the criminal offense occurring on or after December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 288
Information Technology Committee Substitute Adopted 4/22/99
Third Edition Engrossed 4/26/99
Proposed House Committee Substitute S288-PCS1748-SA

Short Title: Unsolicited Comm. Elec. Bulk Mail. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-75.4 reads as rewritten:

"**§ 1-75.4. Personal jurisdiction, grounds for generally.**

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

. . .

(4) Local Injury; Foreign Act. -- In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:

a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; ~~or~~

computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission, or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(b) Any person who violates this section shall be guilty of computer trespass, which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another and the damage is valued at less than two thousand five hundred dollars ($2,500) caused by the person's act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at two thousand five hundred dollars ($2,500) or more caused by the person's act in violation of this section, the offense shall be punished as a Class I felony.

(c) Any person whose property or person is injured by reason of a violation of this section may sue for and recover any damages sustained and the costs of the suit pursuant to G.S. 1-539.2A."

Section 4. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-539.2A. Damages for computer trespass.**

(a) Any person whose property or person is injured by reason of a violation of G.S. 14-458 may sue for and recover any damages sustained and the costs of the suit. Without limiting the general of the term, "damages" shall include loss of profits. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and may elect, in lieu of actual damages, to recover the lesser of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day. The injured person shall not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk commercial electronic mail over its computer network. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs and may elect, in lieu of actual damages, to recover the greater of ten dollars ($10.00) for each and every

unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day.

(b) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. 1-75.4(13)."

Section 5. This act becomes effective December 1, 1999. Section 3 of this act applies to offenses occurring on or after December 1, 1999. Section 4 of this act applies to violations of G.S. 14-458 occurring on or after December 1, 1999.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 288 A BILL TO BE ENTITLED AN ACT TO EXTEND NORTH CAROLINA'S "LONG ARM JURISDICTION" STATUTE TO INCLUDE SENDERS OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL AND TO MAKE THE SENDING OF UNSOLICITED ELECTRONIC BULK COMMERCIAL MAIL UNLAWFUL IN THIS 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

S 2

SENATE BILL 34*
Judiciary I Committee Substitute Adopted 4/22/99

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND 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) In addition to the applicable limits on liability under G.S. 166A-15, any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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) In addition to the applicable limits on liability under G.S. 166A-15, an adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

SENATE BILL 34:
Emergency Shelter/Health Facility Immunity.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Cochrane
Date:	June 1, 1999	**Summary by:**	O.Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***Senate Bill 34 provides immunity from liability for health care facilities, home care agencies, and adult care homes, (hereafter referred to as facility) when care is rendered or shelter given to during a declaration of disaster or emergency at the request of an emergency management agency, whether or not the facility is compensated. The bill also provides for a waiver of rules in order to permit emergency services to be rendered. The bill is a recommendation of the NC Study Commission on Aging.***

CURRENT LAW: G.S. 166A-15 grants general immunity to any person whose property is used to shelter, protect, safeguard, or aid another person in an emergency situation, but this immunity does not necessarily apply to services provided in connection with the use of the property for emergency purposes. Current law does not provide any specific immunity for health care facilities, home care agencies, or adult care homes when providing shelter or rendering services during declared emergencies. G.S. 166A-14 provides immunity to any full or part-time paid or volunteer employee of any agency or organization performing emergency manangement services pursuant to a request of the State government. Current law also does not allow a health care facility, home care agency, or adult care home to operate outside of the rules of the NC Medical Care Commission even under emergency situations, except by a specific suspension of the rules by the Governor, with the approval of the Council of State, under the Governor's emergency powers.

BILL ANALYSIS: Senate Bill 34 provides health care facilities, home care agencies, and adult care homes, that provide temporary shelter or services to individuals during declared disasters at the request of an emergency management agency, with immunity for damages caused by the facility's acts or omissions in providing shelter or services. The bill also provides that rules applicable to such facilities may be waived under certain circumstances in order for this temporary shelter or services to be provided.

Section 1 provides immunity for health care facilities and home care agencies as defined in G.S. 131E-154.2(3). Section 2 provides immunity for adult care homes as defined in G.S. 131E-136(2). The immunity applies to personal injury, wrongful death, property damage, or other loss, whether the facility was compensated or not. In order to qualify for the immunity, the services must be rendered at the request of an emergency management agency implementing an approved emergency plan; the facility 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 and the emergency management agency; and the care must be provided within 45 days of the emergency declaration unless the declaration is extended. The immunity does not apply if the damage was caused by gross negligence, wanton conduct,

or intentional wrongdoing. The rules of the NC Medical Care Commission, which is charged with regulating these facilities, may be temporarily waived to the extent necessary to allow the facility to provide the temporary shelter or services, unless the Division of Facility Services determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any person in the facility. This provision allows for rule waivers to be automatic upon an emergency being declared where the waiver has been preapproved by the Division as part of a predisaster plan and on a case-by-case basis during a disaster for any rules whose waivers have not been preapproved.

EFFECTIVE DATE: The bill would become effective July 1, 1999 and would apply to shelter and services provided on or after that date.

RELEVANT STATUTES

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which he would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the

same powers, duties, immunities and privileges he would ordinarily possessif performing his duties in the State, or political subdivisionthereof in which normally employed or rendering services.

§ 166A-15. No private liability.

Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes.

HOUSE JUDICIARY I COMMITTEE

June 8, 1999

Agenda

House Bill 517 – Stop Threats/Acts of school Violence
Representative Moore

Senate Bill 297 – Limited Partnership Law Changes
Senator Clodfelter

Senate Bill 1009 – Journalists' Testimonial Privilege
Senator Hoyle

HOUSE JUDICIARY I COMMITTEE
June 8, 1999
Minutes

The House Judiciary I Committee met on Tuesday, June 8, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Clary, Ellis, Gardner, Gray, Insko, Moore, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 1009, Journalists' Testimonial Privilege**, had been removed from the agenda at the request of the bill sponsor.

The Chairman stated that **House Bill 517** was before the committee for recommendation as to whether the House should concur in the Senate Judiciary I committee substitute.

Representative Moore was recognized to explain changes that were made in the Senate committee substitute for **House Bill 517, AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL AND FOR BRINGING EXPLOSIVE DEVICES ON SCHOOL PROPERTY, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR THREE HUNDRED SIXTY-FIVE DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM**, (Attachment II). Representative Moore recognized Senator Dalton to explain the changes recommended by Mike Ward , Superintendent of Public Instruction and Mr. Phil Kirk, Chairman, State Board of Education in response to the epidemic of bomb threats that had been reported in the state's schools. Senator Dalton said that bomb threats cost the state much money. Senator Dalton stated that the bill changes criminal penalties for making a bomb threat or planting a false bomb from a Class H felony to a Class G felony. The bill also increases the punishment for possessing or carrying a stick of dynamite, bomb, grenade, mine or other explosive device on educational property from a Class I felony to a Class F felony. The bill would require a 365-day suspension from school and provides for parental responsibility. These provisions are outlined in a bill analysis prepared by Mr. O. Walker Reagan, Staff Attorney, (Attachment III).

Superintendent Ward was recognized and spoke in support of the bill.

Chairman Kirk spoke in support of the bill.

Ms. Deborah Ross, ACLU of North Carolina, was recognized. She said that the ACLU does not oppose coming up with a solution for this problem, but that the bill deals only with establishing more punishment for students and their parents, and does not have a section that is devoted to preventing these occurrences from happening again. She stressed the need for further study by the Joint Education Oversight Committee.

Ms. Jan Crotts, School Administrators' Association, spoke in support of the bill.

Committee discussion followed.

Representative Moore moved to recommend that the House do concur in the Senate committee substitute #3.

Representative Ellis spoke against the motion and moved that the House do not concur.

Representative Moore's motion to concur was before the committee. Upon voice vote, the Chairman ruled that the ayes appeared to be in the majority. Division was called. Upon a count of hands, the Chairman stated that the committee recommended that the House do concur.

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 8, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joel Wilson	Sen. Lee
Mike Ward	DPI
Ann Belam	SBE
Phil Kirk	NCCBI / SBE
Dan Clodfelter	Senate
[illegible]	NCBA
[illegible]	NCASA
[illegible]	SOS
[illegible]	SOS
Nicole Dusenberry	SBE
[illegible]	SOS
Tommy Hamilton	NCAEPA
Melissa Suárez	J.L.F
Melissa Lovell	DOJ
P. Bay Hall	General Statutes Commission
Ashley Westbrook	Governors Office
Deborah [illegible]	ACLU
[illegible]	ZDA, PA
Claudia Bazl	Senator Pro Tem
Joe McClees	Legislative Law Enf'g Comm Inc
Emily Coronado	Carolina Justice Policy Center
[illegible]	NCAE
Bill Wilson	NCAE
John Phelps	NCLM
Bryan Beatty	DOJ
[illegible]	OJJ
Chris Willett	NC Ed + Law Project

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
P. L. Mc	Mallon Co
Karen Gaw	Governor's Office
Cam Cowen	BPMHL
John Kurtz	NCFPC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 5

HOUSE BILL 517
Committee Substitute Favorable 4/27/99
Senate Education/Higher Education Committee Substitute Adopted 5/5/99
Senate Education/Higher Education Committee Substitute #2 Adopted 5/12/99
Senate Judiciary I Committee Substitute No. 3 Adopted 5/24/99

Short Title: Stop Threats/Acts of School Violence. (Public)

Sponsors:

Referred to:

March 22, 1999

A BILL TO BE ENTITLED

AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL AND FOR BRINGING EXPLOSIVE DEVICES ON SCHOOL PROPERTY, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR THREE HUNDRED SIXTY-FIVE DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM.

The General Assembly of North Carolina enacts:

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

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

(a) ~~If~~ Except as provided in subsection (c) of this section, any person ~~shall,~~ who, by any means of communication to any person or group of persons, ~~make~~ makes a

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

(b) Repealed by S.L. 1997-443, s. 19.25(cc).

(c) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning, is guilty of a Class G felony. As part of restitution, the court may order a person convicted under this subsection to reimburse the affected educational entity for the costs resulting from the disruption or dismissal of school or school-related activity arising from the false report. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity.

(d) For purposes of this section, the term 'report' shall include making accessible to another person by computer."

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

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

(a) ~~If~~ Except as provided in subsection (c) of this section, any ~~person,~~ person who, with intent to perpetrate a hoax, ~~shall secrete, place or display~~ secretes, places, or displays any device, machine, instrument or artifact, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or ~~property, he shall be~~ property is guilty of a Class H felony.

(b) Repealed by S.L. 1997-443, s. 19.25(dd).

(c) Any person who, with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property is guilty of a Class G felony. As part of restitution, the court may order any person convicted under this subsection to reimburse the affected educational entity for the costs resulting from the disruption or dismissal of school or the school-related activity arising from the hoax. For purposes of this subsection, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity."

Section 3. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. -- Any public or private school building or bus, public or private school campus, grounds, recreational area,

athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.

(2) Student. -- A person enrolled in a public or private school, college or university, or a person who has been suspended or expelled within the last five years from a public or private school, college or university, whether the person is an adult or a minor.

(3) Switchblade knife. -- A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. -- Any device enumerated in subsection ~~(b)~~ (b), (b1), or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any ~~kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1,~~ kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class F felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any ~~kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1,~~ kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class F felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. This subsection shall not apply to fireworks.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), ~~and~~ firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), ~~and~~ firework, or any sharp-pointed or edged instrument

except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

(1) The person is not a student attending school on the educational property;

(2) The firearm is not concealed within the meaning of G.S. 14-269;

(3) The firearm is not loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and

(4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

Section 4. If Senate Bill 57 of the 1999 General Assembly is enacted into law, G.S. 20-11(n1)(1)d. as enacted in Section 5 of Senate Bill 57, reads as rewritten:

"d. Enumerated student conduct. -- One of the following behaviors that results in disciplinary action:

1. The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.

2. The possession or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.

3. <u>The making of a false report or perpetrating a hoax that resulted in disciplinary action under G.S. 115C-391(d3) or that could have resulted in that disciplinary action if the conduct had been committed by a student enrolled in a public school.</u>

<u>4.</u> The physical assault on a teacher or other school personnel on school property."

Section 5. Article 43 of Chapter 1 of the General Statutes is amended by adding the following new section to read:

"**§ 1-538.3. Civil liability for making a bomb threat affecting a school.**

(a) The parent or individual legal guardian who has the care, custody, and control of an unemancipated minor is civilly liable to the educational entity against whom the minor has committed an act set forth in this section. The parent or individual legal guardian shall be liable if the minor:

(1) By any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning; or

(2) With intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property.

The parent or individual legal guardian shall not be liable under this section if the parent or individual legal guardian did not know or reasonably could not have known of the child's likelihood to commit such an act, did not have the opportunity and ability to control the child, and either made a reasonable effort to correct or restrain the child from committing such an act, or notified the educational entity or an appropriate law enforcement agency of the false threat or hoax. In an action brought against the parent or legal guardian under this section, the educational entity is entitled to recover the actual compensatory and consequential damages resulting from the disruption or dismissal of school or the school-related activity arising from the false report or hoax. The total amount of compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian shall not exceed one hundred thousand dollars ($100,000). For purposes of this section, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1), and the term 'educational entity' means the board of education or other entity that administers and controls the educational property or the school-related activity.

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

Section 6. G.S. 115C-391(d1) reads as rewritten:

"(d1) A local board of education or superintendent shall suspend for 365 days any student who brings a weapon, as defined in ~~G.S. 14-269.2(b)~~ G.S. 14-269.2(b), 14-269.2(b1), and ~~G.S.~~ 14-269.2(g), onto ~~school~~ educational property. The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 7. G.S. 115C-391 is amended by adding the following new subsection to read:

"(d3) A local board of education shall suspend for 365 days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-related activity on or off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, secretes, places, or displays any device, machine, instrument, or artifact on educational property or at a school-related activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1)."

Section 8. G.S. 115C-391(e) reads as rewritten:

"(e) A decision of a superintendent under subsection (c), (d1), ~~or (d2)~~ (d2), or (d3) of this section may be appealed to the local board of education. A decision of the local board upon this appeal or of the local board under subsection (d) or (d1) of this section is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision."

Section 9. The Joint Legislative Education Oversight Committee, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, and local boards of education, shall examine the issue of students who threaten to commit or who carry out acts of violence directed at schools and the persons who are present in the schools. As part of this study, the Committee shall: (i) evaluate current laws governing the discipline, suspension, and expulsion of these students; (ii) evaluate current criminal and juvenile laws to make sure local authorities are authorized to take immediate action and to ensure the consequences for these acts and threats are taken seriously; (iii) review how other states are approaching this issue; (iv) identify effective education practices to prevent these threats or acts of violence; and (v) consider any other issue it considers appropriate. The Committee may make recommendations, including necessary appropriations, to the 2000 Regular Session of the 1999 General Assembly.

Section 10.(a) The State Board of Education, in consultation with the Office of Juvenile Justice, the Department of Correction, and the Department of Community Colleges, shall study the method for computing dropout rates for the School-Based Management and Accountability Program (ABCs). The State Board of

Education shall recommend whether the computation used to set the dropout rate for this purpose should include students who (i) transfer to a community college; (ii) are placed by the courts in a setting which provides educational opportunities; (iii) are expelled from school; (iv) do not return to school after a long-term suspension in accordance with a safe school plan; or (v) have been counted previously as dropouts. As a part of this study, the State Board of Education shall report, from data for the 1998-99 school year, the number of students in each of these categories. The State Board of Education shall examine whether it should continue to use other methods of computing the dropout rate for other purposes.

Section 10.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 15, 1999, regarding its recommendations as to the computation of the dropout rates for the ABCs accountability program. This report shall include the number of dropouts for the 1998-99 school year based on categories (i) and (iii)-(v) in subsection (a) of this section. The report also shall include the number of dropouts for the 1998-99 school year based on category (ii) in subsection (a) of this section if this information is available.

Section 11. Sections 4, 7, 8, 9, 10(a), 10(b), and 11 of this act are effective when this act becomes law, and Section 7 applies to offenses committed on or after that date. Sections 1, 2, 3, and 6 of this act are effective on September 1, 1999, and apply to offenses committed on or after that date. Section 5 of this act is effective September 1, 1999, and applies to causes of action arising on or after that date.

HOUSE BILL 517:
Stop Threats/Acts of School Violence

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Moore
Date:	June 3, 1999	**Summary by:**	O. Walker Reagan, Staff Attorney
Version:	5th Edition - For concurrence		

SUMMARY: House Bill 517 would increase the classification from a Class H felony to a Class G felony for making a bomb threat against a school or for perpetrating a hoax with a false bomb at a school; increase the classification from a Class I felony to a Class F felony for bringing an explosive device on school property; add suspension from school for making a false bomb threat or bomb hoax as a ground for losing driving privileges by a driver under age 18; make parents and legal guardians civilly liable for children who make these threats or perpetrate these hoaxes; require schools to suspend for 365 days any student who makes this threat or perpetrates this hoax; direct the Joint Legislative Education Oversight Committee to study the issue of students who make or carry out threats of violence directed at schools; and direct the State Board of Education to study its method of computing dropouts for the ABC's Program.

NEW OFFENSES: Section 1 of House Bill 517 would make it a Class G felony to make a false report that a bomb or other explosive device is located on educational property or at a school-related activity on or off educational property. Section 2 would make it a Class G felony to intend to perpetrate a hoax by placing or displaying a device on educational property or at a school-related activity on or off educational property that causes any person to reasonably believe the device is a bomb or similar device. Educational property would be defined as any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.

As part of restitution, the bill would authorize the court to order a person convicted of either crime to pay restitution to the appropriate educational entity for the costs resulting from the disruption or dismissal of school or a school-related activity due to the false report or hoax. An educational entity would be defined as the board of education or other entity that administers and controls the educational property. To cover threats made by posting a threat on an Internet web site, the term "report" is defined to include making accessible to another person by computer.

Under current law, making a bomb threat or perpetrating this type of hoax against any entity is a Class H felony.

Section 3 increases the punishment for possessing or carrying a stick of dynamite, bomb, grenade, mine or other explosive device on educational property, or causing, encouraging or aiding another person to do the same, from a Class I felony to a Class F felony. This section also clarifies that fireworks are not powerful explosives under this law and provides that possessing or carrying fireworks on educational property would be a Class 1 misdemeanor.

LOSE LICENSE: Section 4 would amend Senate Bill 57 - Lose Control/Lose Your License, as it passed the Senate, to require a person under age 18 to lose driving privileges for making a false bomb threat or perpetuating a bomb hoax on educational property. This provision would become effective if Senate Bill 57 is enacted into law.

CIVIL LIABILITY OF PARENTS: Section 5 would permit the educational entity affected by a bomb threat or hoax to file a civil action against the parents or individual legal guardians of a minor who made the threat or hoax against the school. If the parents or guardians are found liable, the educational entity could recover actual compensatory and consequential damages resulting from disruption or dismissal of school or a school-related activity due to the threat or hoax. The parents or guardians would not be liable if they (i) did not know or reasonably could not have known of the child's likelihood to commit such an act, (ii) did not have the opportunity and ability to control the child, and (iii) made a reasonable effort to correct or restrain the child from committing such an act or notified an appropriate law enforcement agency of the threat or hoax. The liability of the parent or legal guardian would be limited to $100,000.

Under current law, a parent or legal guardian is strictly liable to another person for a maximum of $2000 in actual damages when a child maliciously or willfully injures that other person or destroys that person's property. (G.S. 1-538.1).

MANDATORY 365-DAY SUSPENSION: Section 7 would require local boards to suspend for 365 days any student who makes a false report that a bomb is located on educational property or at a school-related activity on or off educational property. It also would require local boards to suspend for 365 days any student who perpetrates a hoax by use of a false bomb or similar device on educational property or at a school-related activity on or off educational property. The board would be permitted to modify either requirement at the request of the superintendent on a case-by-case basis.

Currently, local boards are not required to take any action against these students. They may suspend these students for as long as the remainder of that school year. They could recommend alternative placements for these students. They also may expel (i.e., permanently remove) any student who is at least 14 years old and whose behavior indicates that his or her continued presence in school constitutes a clear threat to the safety of other students or employees.

ED OVERSIGHT STUDY: Section 9 would direct the Joint Legislative Education Oversight Committee to study, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, and local boards, the issue of students who threaten to commit or who carry out acts of violence directed at schools and the people in the schools. The Committee would be directed to (i) evaluate current school discipline laws, criminal laws, and juvenile laws; (ii) review what other states are doing; (iii) identify effective educational practices to prevent these threats or acts; and (iv) consider any other appropriate issue. The Committee may report to the 2000 General Assembly.

DROPOUT COMPUTATION: Sections 10a and b would direct the State Board of Education to study how dropout rates are computed for the purpose of the School-Based Management and Accountability Program (ABCs). The State Board must recommend whether dropout rates should be computed to include students who: transfer to a community college; are placed by a court in a setting which provides

educational opportunities; are expelled; do not return to school after a suspension of at least 10 days; or have been previously counted as dropouts. By December 15, 1999, the State Board shall report to the Joint Legislative Education Oversight Committee its recommendations as to the computation of the dropout rates for the ABCs program. The report shall include the number of dropouts for the 1998-99 school year based on the above categories (the number of students who are placed by the courts only must be included if available).

EFFECTIVE DATES: The changes to Senate Bill 57 - Lose Control/Lose Your License, mandatory school suspension for bomb threats or hoaxes, and the studies provisions are effective when the bill becomes law. The school suspension provisions apply to offenses committed on or after that date.

The changes to the criminal statutes (bomb threat, bomb hoax, and explosives on school property) are effective September 1, 1999 and apply to offenses committed on or after that date.

The section creating civil liability for parents is effective September 1, 1999 and applies to causes of action arising 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) **Hackney** for the Committee on **JUDICIARY I.**

☒ **Senate** Committee Substitute # 3 for
H.B. 517 A BILL TO BE ENTITLED AN ACT INCREASING THE CRIMINAL PENALTY FOR MAKING A BOMB THREAT OR PERPETRATING A HOAX BY PLACING A FALSE BOMB AT SCHOOL AND FOR BRINGING EXPLOSIVE DEVICES ON SCHOOL PROPERTY, MAKING PARENTS CIVILLY LIABLE FOR CHILDREN WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, REQUIRING SCHOOLS TO SUSPEND FOR THREE HUNDRED SIXTY-FIVE DAYS STUDENTS WHO MAKE THESE THREATS OR PERPETRATE THESE HOAXES, PROVIDING FOR LOSS OF DRIVERS LICENSE PRIVILEGES BY CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN FOR COMMITTING DESIGNATED ACTS, DIRECTING THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF STUDENTS WHO MAKE OR CARRY OUT THREATS OF VIOLENCE DIRECTED AT SCHOOLS OR THE PERSONS IN THE SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO STUDY THE COMPUTATION OF DROPOUT RATES FOR THE ABCs PROGRAM.

☐ 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)

HOUSE JUDICIARY I COMMITTEE

June 10, 1999

Agenda

Senate Bill 297 - Limited Partnership Law Changes
Senator Clodfelter

Senate Bill 746 - Structured Settlement Protection Act
Senàtor Cooper

Senate Bill 1009 – Journalists' Testimonial Privilege
Senator Hoyle

Senate Bill 1074 - Year 2000 Consumer Protection Act
Senator Reeves

HOUSE JUDICIARY I COMMITTEE
June 10, 1999
Minutes

The House Judiciary I Committee met on Thursday, June 10, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Gray, Insko, Miller, Moore, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, (Attachment II), had been added to the agenda to accommodate an out-of-town speaker. He reminded the committee that a proposed committee substitute had been adopted for the purpose of discussion on May 20, 1999, and said that the bill would be called first for the limited purpose of hearing from the speaker.

Mr. Davis Horne was recognized to introduce Mr. Thomas H. Countee, Jr., Executive Director of The National Spinal Cord Injury Association. Mr. Countee addressed the committee in support of the structured settlement protection act. A copy of his comments is attached, (Attachment III).

Senator Hoyle was recognized to continue the discussion of **Senate Bill 1009, AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE**, (Attachment IV). The bill was discussed during the May 18, 1999 meeting of the committee. Senator Hoyle offered a proposed committee substitute, (Attachment V).

Representative Miller moved that the committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Hayes, Committee Counsel, was recognized to explain the committee substitute. Ms. Hayes stated that in the committee substitute the word "person" has been reinserted into the definition of "journalist." She noted that this had been recommended during the initial discussion on May 18. She said that the effective date had also been amended so that the privilege will only apply to information, documents or items obtained or prepared while acting as a journalist on or after October 1, 1999.

Senator Hoyle and Representative Miller each spoke in support of the bill and urged the committee to give the bill a favorable report.

Representative Miller moved for a favorable report for the House committee substitute, and an unfavorable report as to the Senate committee substitutel bill.

Mr. Rex Gore, North Carolina Conference of District Attorneys, expressed some concerns regarding "nonconfidential" information. He suggested the removal of the words "nonconfidential from page 2, line 5 and the words "or investigation" from page 1, lines 18 and 19.

Representative Ellis offered an amendment to remove the words "or investigation" from lines 18 and 19 of page one, (Attachment VI). The motion carried.

Representative Redwine offered an amendment to remove the words "noncontroversial" from line 8 of page 2, (Attachment VII).

Senator Hoyle and Representative Miller spoke in opposition to the amendment.

Considerable committee discussion followed and Mr. John Bussian, North Carolina Press Association, responded to questions.

The question before the committee was the adoption of the Redwine amendment. Upon voice vote, Representative Redwine called for division. By a count of hands, four members voted for the amendment, seven voted in opposition. The amendment failed.

Representative Blue moved that the amendment be incorporated into a new House committee substitute, that the committee substitute be given a favorable report and the Senate committee substitute bill be given an unfavorable report. The motion carried, (Attachment VIII). A copy of the committee substitute is attached, (Attachment VIII).

The meeting was adjourned.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

THE HOUSE JUDICIARY I [redacted] COMMITTEE [redacted] JUNE 10, 1999

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Rex Moore	Conference of DAs
2.	Teri Saylor	NCPA
3.	Charlie Lawrence	SOS
4.	Mike Page	SOS
5.	Floyd M. Lewis	General Statutes Commission
6.	Willie Hawkins	NC Press Assn
7.	JOHN BUSSIAN	" "
8.	Bob Prow	Jordan Price Wall
9.	Cam Cowles	BPMHL
10.	Wade Rawlins	The News & Observer
11.	Estes Thompson	AP
22.	Melissa Lovell	DOJ
23.	Andy Lomeut	NCLM.
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBTITUTE
S746-CSRN-001
Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible

administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future; provided, however, that if, at the time the payee

and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties;

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy

of such notice with the court or responsible administrative authority;

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service;

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether

from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the

transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"**§ 1-543.16. Construction.**

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

ATTACHMENT III

National Spinal Cord Injury Association

8300 Colesville Road, Suite 551
Silver Spring, Maryland 20910
(301) 588-6959 Fax (301) 588-9414

web site: http://www.spinalcord.org
e-mail: nscia2 @ aol.com
1-800-962-9629

STATEMENT

TESTIMONY BY THOMAS H. COUNTEE, JR., ESQ., EXECUTIVE DIRECTOR, THE NATIONAL SPINAL CORD INJURY ASSOCIATION, BEFORE HOUSE JUDICIARY COMMITTEE I, NORTH CAROLINA STATE LEGISLATURE, THURSDAY, JUNE 10, 1999

Good morning, Chairman Hackney and other Representatives.

My name is Thomas H. Countee, Jr., Executive Director of The National Spinal Cord Injury Association (NSCIA), a national non-profit organization, headquartered in Silver Spring, Maryland. NSCIA's North Carolina Chapter is in Winterville. The Association's President is Jack Dahlberg, who is a quadriplegic.

On a personal note, I have close family connections to North Carolina: my maternal forbears lived in Henderson, North Carolina. My parents met and were married in Winston-Salem and I spent a portion of each early childhood summer in that city. Later in my life, my daughter and I summered in Kill Devil Hills on the Outer Banks and I still enjoy deep sea fishing out of Hatteras. I also own property in Charlotte. Forty-one years ago in 1958, I sustained a diving accident on the Chesapeake Bay, rendering me a quadriplegic. I am an attorney and I served 15 months as Legislative Counsel in the Ford White House. It is a pleasure and honor to come to North Carolina, again to testify on S.746.

Today, I represent over 5,000 members of the National Spinal Cord Injury Association and thousands of other spinal cord injured persons, many of whom benefit from structured settlements, including several hundred in North Carolina. The National Spinal Cord Injury Association has no business or tax effect stake in the outcome of this proposed legislation, S 746. . However, the Association is deeply interested in the health, safety and welfare of persons with catastrophic, traumatic and/or debilitating injuries, many of whom are Association members and receive structured settlements.

NSCIA is deeply troubled at the emergence of factoring companies that convince injury victims, including persons with disabilities, to sell structured settlement payments for a deeply discounted cash lump sum. Such transactions completely undermine the long-term financial security of a structured settlement and threaten the very livelihood of an otherwise extremely vulnerable population - those of us with disabilities. And the steep financial discounts that disabled Americans often are persuaded to accept would be unacceptable to any fair-minded person.

Factoring companies increasingly prey upon the weakest, most gullible and most vulnerable in our society. I assume many of you have seen the television ads soliciting calls from those who have recently suffered severe injuries. We believe that at present, the emerging "gray market" of factoring companies is largely unregulated, unresponsive to the needs and best interests of recipients of structured settlements and unconscionable in their slick, high pressure marketing practices and unethical legal maneuvers and strategems such as the use of a confessed judgment against the victim in a distant court to garnish the victim's payments.

One last point, Mr. Chairman, I have come here to let you see the type of catastrophic injury affected by this bill and to put a human face on this legislation, not as the beneficiary of a structured settlement, but as a leader of, and advocate for, severely disabled persons who have. In 1982, the intent of Congress, the social purpose if you will, was to encourage those who receive monetary settlements growing out of catastrophic injuries, to accept periodic payments to safeguard the uncertain futures they face. Factoring companies' intent, on the other hand, is simply to cheat severely injured persons out of their money. S.746 does nothing to help those who have already been taken advantage of; we need this legislation to guide those who may be taken advantage of in the future. You can, and should, stop this outrage. Sound public policy and simple decency would indicate that as legislators, you have no choice but to do the right thing.

For all these reasons, The National Spinal Cord Injury Association respectfully recommends and strongly urges your support of S.746, The North Carolina Structured Settlement Act, which would provide needed protection from the predatory practices of these factoring companies.

Thank you for the time and attention you are devoting to this critical issue and the opportunity to appear before you. I will be happy to answer any questions you may have about the Association or our interest in this matter.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S **2**

SENATE BILL 1009
Judiciary I Committee Substitute Adopted 4/26/99

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any company or entity, or the employees, independent contractors, or agents of that company or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production."

Section 2. This act is effective when it becomes law and applies to all actions and proceedings pending in the courts of this State on or after that date.

ATTACHMENT V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1009
Judiciary I Committee Substitute Adopted 4/26/99
Proposed House Committee Substitute S1009-PCSSA-001

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

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(a) Definitions. The following definitions apply in this section:

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(2) Legal proceeding. -- Any grand jury proceeding or investigation; any criminal prosecution, civil suit, or related proceeding in any court; and, any judicial or quasi-judicial proceeding before any

administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production."

Section 2. This act becomes effective October 1, 1999 and applies to information, documents, or items obtained or prepared while acting as a journalist on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT VI

(Please type or use ballpoint pen) Ellis

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1009 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Ellis
Sen.)

moves to amend the bill on page 1, line 18-19

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

~~"(2) Legal proceeding. -- Any grand jury proceeding in any criminal prosecution, civil~~

"(2) Legal proceeding. -- Any grand jury proceeding or grand jury investigation; any criminal prosecution, civil

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Redwine #2 ATTACHMENT VII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1009 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Redwine
Sen.)

1 moves to amend the bill on page 2, line 8

2 ( ) WHICH CHANGES THE TITLE

3 by deleting " or nonconfidential"

4

5

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 1009 A BILL TO BE ENTITLED AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

☐ 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 1009
Judiciary I Committee Substitute Adopted 4/26/99
Proposed House Committee Substitute S1009-PCS1752-SA

Short Title: Journalists' Testimonial Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE FREE FLOW OF INFORMATION TO THE PEOPLE OF NORTH CAROLINA BY CODIFYING THE JOURNALISTS' TESTIMONIAL PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Persons, companies, or other entities engaged in gathering or dissemination of news.**

(a) Definitions. The following definitions apply in this section:

(1) Journalist. -- Any person, company, or entity, or the employees, independent contractors, or agents of that person, company, or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. -- Any grand jury proceeding or grand jury investigation; any criminal prosecution, civil suit, or related proceeding in any court; and any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. -- Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by clear and convincing evidence that the testimony or production sought:

(1) Is highly relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production."

Section 2. This act becomes effective October 1, 1999, and applies to information, documents, or items obtained or prepared while acting as a journalist on or after that date.

HOUSE JUDICIARY I COMMITTEE

1999-2000 SESSION

MINUTES

June 15, 1999 – July 13, 1999

1999

HOUSE JUDICIARY I COMMITTEE

MINUTES

HOUSE JUDICIARY I COMMITTEE

June 15, 1999

Agenda

House Bill 298 – Inpatient Commitment/Conditional Release
Representative Hackney

Senate Bill 297 – Limited Partnership Law Changes Explained 5-11-99
Senator Clodfelter (PCS was adopted)
Susan has PCS #2

Senate Bill 888 - Drug Law Amendments Explained 5-27-99
Senator Cooper PCS was adopted
No action taken pending fiscal note

Senate Bill 1074 – Year 2000 Consumer Protection Act
Senator Reeves

HOUSE JUDICIARY I COMMITTEE
June 15, 1999
Minutes

The House Judiciary I Committee met on Tuesday, June 15, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Gardner, Insko and Moore. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **House Bill 298, AN ACT TO PROVIDE FOR THE MONITORING AND SUPERVISION OF PERSONS ON CONDITIONAL RELEASE FROM STATE PSYCHIATRIC HOSPITALS, AND TO APPROPRIATE FUNDS**, (Attachment II) had become controversial and that it had been agreed that the provisions would become a study. He offered a proposed committee substitute, (Attachment III).

Representative Moore moved that the proposed committee substitute be adopted, and that it be given a favorable report and re-referred to the Committee on Rules, and that the original bill be given an unfavorable report. The motion carried, (Attachment IV). Representative Gardner voted against the motion.

Senator Clodfelter was recognized to continue the discussion of the committee substitute for **Senate Bill 297, AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS**, that was adopted by the committee on May 11, 1999, (Attachment V). Senator Clodfelter offered a second proposed committee substitute, (Attachment VI).

Representative Insko moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Senator Clodfelter stated that the committee substitute made a technical change in the last section dealing with the effective date of the bill. The date is not changed, but is simply grammatically improved. Senator Clodfelter continued the explanation of Sections 11-37 of the bill. Those provisions are outlined in a bill analysis that is attached to the minutes, (Attachment VII).

A memorandum of support distributed by the North Carolina Bar Association is attached, (Attachment VIII).

Representative Insko moved that the committee substitute be given a favorable report, unfavorable as to original bill, and that the bill be re-referred to the Committee on Finance. The motion carried, (Attachment IX).

Senator Reeves was recognized to explain **Senate Bill 1074, AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM**, (Attachment X). Senator Reeves stated that the bill gives a catch mechanism for "mainstreet" North Carolina should they wake up on January 1, 2000 with no way to meet their financial obligations. The bill will stop predators from repossessing property and will stop landlords from evicting their tenants.

He said that the bill will not excuse persons from obligations, but allows time to straighten out affairs should one be hit by a Y2K bug and it is beyond the person's control. Additional explanation is found in the bill analysis prepared by Ms. Susan Hayes, Committee Counsel, (Attachment XI).

Representative Alexander offered an amendment, (Attachment XII). Senator Reeves stated that the amendment was designed to have Section (e) comply with federal law.

Representative Alexander moved adoption of the amendment. The motion carried.

Representative Alexander offered a second amendment regarding the effective date, (Attachment XIII), and moved its adoption. The amendment was adopted.

Representative Moore moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment XIV). A copy of the committee substitute is included in the attachments to the minutes, (Attachment XV).

The next bill before the committee was **Senate Bill 888, AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES**, (Attachment XVI). The bill was first explained during the committee meeting on May 27, 1999, at which time a committee substitute was adopted, (Attachment XVI). Mr. John Waters, State Bureau of Investigation was recognized to continue the explanation of the bill in the absence of Senator Cooper. A second proposed committee substitute was distributed, (Attachment XVII). Mr. Waters stated that the committee substitute removed a provision whereby the SBI would be allowed to recapture restitution paid for drug analysis by having that money deposited into the Department of Justice Special Fund rather than the General Fund. The monies would now revert to the General Fund.

Chairman Hackney noted that the bill was requiring something that judges and district attorneys are not going to know is law, which is not good public policy. He said that Section 2 should be effective December 1, 1999 like the remainder of the bill.

Representative Alexander offered an amendment regarding the effective date of the legislation, (Attachment XVIII) and moved its adoption. The amendment was adopted.

A copy of the fiscal analysis that addressed the first committee substitute that had been adopted is attached to the minutes, (Attachment XIX).

Representative Moore requested that the bill be held over to allow for the drafting of an amendment regarding drug paraphernalia.

No action was taken on the bill and the meeting was adjourned.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 15 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Schafer	N.C. Bar Association
Joe Donovan	NHMI - NC
Gary Walker	ALLTEL
Polly Whiteside	AOC
Don A. Handley	AOC
P. Bly Hall	General Statutes Commission
Linda Pope	Sec. of State
Janet Smoreau	NC Council
H Watters	NC Attorney General
Lisa Reiss	THE INSIDER
[illegible]	NCAJ
Laura Hartsell	NC Bar Association
John Phelps	NCLM
[illegible]	JD, AL
[illegible]	NCFPC
Ali Case	NCRMA
John Policastro	AT&T
[illegible]	Poyner & Spruill
David Sickmon	ZDA, PA
Kim Stibbard	NCLM
Andy Little	NC Bar Association

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 298
Committee Substitute Favorable 4/15/99

Short Title: Inpatient Commit./Condt'l Release/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MONITORING AND SUPERVISION OF PERSONS ON CONDITIONAL RELEASE FROM STATE PSYCHIATRIC HOSPITALS, AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-277 reads as rewritten:

"**§ 122C-277. Inpatient commitment; release ~~Release~~ and conditional release; judicial review.**

(a) Except as provided in subsections ~~(b) and (b1)~~ (e) and (f) of this section, the attending physician shall discharge a committed respondent unconditionally at any time ~~he~~ the attending physician determines that the respondent ~~is~~ no longer meets the criteria for inpatient commitment specified in G.S. 122C-263(d)(2). ~~in need of inpatient commitment.~~ Notice of discharge shall be furnished to the clerk of superior court of the county where the petition was initiated and of the county in which the facility is located. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), ~~he~~ the attending physician may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued.

(b) Except as provided in subsections ~~(b) and (b1)~~ (e) and (f) of this section, the attending physician may also release a respondent conditionally on a trial visit for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing

facility. A law-enforcement officer, on request of the attending physician, shall take a ~~conditional releasee~~ respondent on trial visit release into custody and return ~~him~~ the respondent to the facility in accordance with G.S. 122C-205. Notice of ~~discharge and of conditional~~ trial visit release shall be furnished to the clerk of superior court of the county ~~of commitment~~ where the petition was initiated and of the county in which the facility is located.

(c) Except as provided in subsections (e) and (f) of this section, during a period of inpatient commitment, the attending physician may release a respondent conditionally for a period of time not to exceed the remainder of the period of inpatient commitment if the attending physician determines all of the following:

(1) The respondent continues to meet the criteria of G.S. 122C-263(d)(2).

(2) The respondent's current mental status and behavior is stable, and respondent is free of symptoms associated with previous episodes of dangerous conduct.

(3) Based on respondent's psychiatric history, there is a reasonable probability of future dangerous conduct if respondent is discharged to the community without continued treatment, supervision, and the assistance of others.

(4) Adequate treatment, supervision, and assistance for the respondent is available from the area authority that serves the community where respondent will reside upon release.

(5) Based on respondent's psychiatric history, there is a reasonable probability that respondent will not voluntarily seek or comply with recommended treatment upon release to the community unless adequate supervision and assistance are given pursuant to a conditional release plan developed in accordance with subsection (d) of this section.

(d) A respondent may be conditionally released pursuant to subsection (c) of this section only after an individualized outpatient treatment plan has been developed and an area authority has been designated to administer, and has agreed to provide, treatment in accordance with the treatment plan and with G.S. 122C-273(e). With the participation of the respondent, the treatment plan shall be jointly developed by the respondent's attending physician at the releasing facility and the area director, or the area director's designee, for the area authority that serves the community where the respondent will reside upon conditional release. With the consent of the respondent, and as part of the treatment planning process, the area authority shall consult with the respondent's next-of-kin or other family members on strategies designed to support respondent's continued mental stability and reduce the risk of future dangerous conduct. In addition to meeting the requirements of G.S. 122C-273(e), the treatment plan shall include, but need not be limited to, the following:

(1) Based upon an assessment of the respondent's psychiatric history and risk factors, requirements for treatment or services designed to reduce the respondent's risk for future dangerous conduct

including, if any, requirements for medication, case management, supervision, and other services for the treatment of mental illness, developmental disabilities, or substance abuse.

(2) Based upon an assessment of the respondent's psychiatric history and risk factors, requirements, if any, for assistance in obtaining basic needs such as employment, transportation, food, clothing, shelter, or other support services, when this assistance is necessary to reduce the respondent's risk for future dangerous conduct.

(3) Conditions that the respondent must meet to be eligible for continued conditional release and without which there exists a reasonable probability of future dangerous conduct, including, as applicable, such requirements as periodic reporting to treatment professionals at designated time intervals, continuation of medication, and abstention from alcohol and other drugs.

(4) The address of the residence where the respondent is to live upon conditional release and the name of the person in charge of the residence, if any.

Before conditional release, the attending physician of the releasing facility shall provide to the respondent or the respondent's legally responsible person a copy and full explanation of the treatment plan and conditions for release. With the consent of the respondent, a copy and full explanation of the treatment plan and conditions for release shall be provided to the respondent's next-of-kin. Notice of conditional release shall be furnished to the clerk of superior court of the county where the petition was initiated, the county where conditional release will be supervised, and of the county in which the 24-hour facility is located. The respondent's violation of conditions for release is grounds for return of the respondent to a 24-hour facility in accordance with G.S. 122C-273(e).

~~(b)~~ (e) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found incapable of proceeding, 15 days before the respondent's ~~discharge~~ discharge, trial visit, or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed ~~discharge~~ discharge, trial visit, or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found incapable of proceeding may represent the State's interest at the hearing.

~~(b1)~~ (f) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days before the respondent's ~~discharge~~ discharge, trial visit, or conditional release the attending physician shall notify the clerk of superior court. The clerk shall calendar a hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may represent the State's interest at the hearing. The hearing shall be conducted under the standards and procedures set forth in G.S. 122C-268.1.

Provided, that in no event shall ~~discharge~~ discharge, trial visit, or conditional release under this section be allowed for a respondent during the period from automatic commitment to hearing under G.S. 122C-268.1.

~~(c)~~ (g) If a committed respondent under subsections (a), (b), ~~or (b1)~~ (c), (e), or (f) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent.

(h) Maintenance and transfer of court files pertaining to the conditional release of a respondent under this section shall be as provided under G.S. 122C-264(g)."

Section 2. G.S. 122C-273 is amended by adding the following new subsection to read:

"(e) Unless prohibited by Chapter 90 of the General Statutes, if the respondent on inpatient commitment is conditionally released in accordance with G.S. 122C-277(c) and (d), the area authority designated in the treatment plan, and any of its area facilities, may administer to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards. Before the respondent is conditionally released, the inpatient facility releasing the respondent shall provide a copy of the respondent's treatment plan and conditions for release to the area authority designated to administer the treatment plan. As a condition of release, and in addition to any other conditions required by G.S. 122C-277(d)(3), the initial treatment plan shall require the respondent to meet face-to-face with a responsible professional no less than once every seven days to ensure that the respondent is complying with the conditions for release and is receiving treatment, supervision, and assistance necessary to prevent future dangerous conduct or the need for treatment in a 24-hour facility. All of the following apply to conditional release authorized under G.S. 122C-277(c) and (d) and this section.

(1) The medical director for the area authority shall require periodic reports concerning the condition of respondents on conditional release from any person assigned by the area authority to supervise a conditional release treatment plan. The medical director, or the medical director's designee, shall review the condition of a respondent on conditional release at least once every 30 days. In conducting the review, the medical director or the medical director's designee shall consider all reports and information received and may require the respondent to report for further evaluation.

(2) The area authority medical director, or the medical director's designee, may modify the treatment plan, including conditions for release, when modification is consistent with the requirements of G.S. 122C-277(d). The respondent shall be involved in and informed of any changes to the treatment plan and conditions of release. A copy of the modified treatment plan shall be placed in the respondent's medical record and copies shall be provided to

the respondent and any other persons who received copies of the initial treatment plan in accordance with G.S. 122C-277(d).

(3) Notwithstanding the respondent's compliance with the conditions for release, at any time that the area authority finds that conditional release is no longer appropriate and the respondent is in need of inpatient treatment, the area authority responsible for managing and supervising the respondent's treatment shall request the court of the county where the conditional release is being supervised to order the respondent taken into custody for the purpose of transportation to a 24-hour facility designated by the area authority. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take the respondent immediately to the designated 24-hour facility. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251. Within 24 hours of arrival at the 24-hour facility, the respondent shall be examined by a physician who shall act in accordance with the procedures specified in G.S. 122C-266. If the respondent meets the criteria of G.S. 122C-266(a)(1), the 24-hour facility shall notify the clerk of court for the county in which the 24-hour facility is located and request a supplemental hearing as specified in G.S. 122C-274.1.

(4) If the respondent violates a condition of release, and unless compliance is obtained within 24 hours of the violation, the area authority responsible for management and supervision of the respondent's treatment shall immediately request the court of the county where the conditional release is being supervised to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take the respondent immediately to the designated area authority for examination. The law enforcement officer shall turn the respondent over to the custody of the area authority for examination by a physician or eligible psychologist. Upon examination, if efforts to solicit compliance with conditions for release are successful and the respondent is not in need of treatment in a 24-hour facility, the respondent shall be released and returned home after the examination. If efforts to solicit compliance with conditions for release fail or the physician or eligible psychologist determines that conditional release is no longer appropriate and the respondent needs inpatient treatment, the law enforcement officer shall transport the respondent to a 24-hour facility designated by the area authority. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251.

Within 24 hours of arrival at the 24-hour facility, the respondent shall be examined by a physician who shall act in accordance with the procedures specified in G.S. 122C-266. If the respondent meets the criteria of G.S. 122C-266(a)(1), the 24-hour facility shall notify the clerk of court for the county in which the 24-hour facility is located and request a supplemental hearing as specified in G.S. 122C-274.1.

(5) When an area authority physician seeks the return of the respondent to an inpatient facility, the physician shall document and report grounds for the return to the inpatient facility and the clerk of superior court of the county where the conditional release is being supervised.

(6) Except as otherwise provided in this subdivision, during any period of conditional release, if the area facility determines that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(2), the area facility shall notify the court and the case shall be terminated. If the respondent was initially committed as a result of conduct resulting in the respondent being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the designated area facility shall so notify the clerk of superior court of the county in which the area facility is located and the clerk shall schedule a rehearing and provide notice in accordance with G.S. 122C-276. If the respondent was initially committed pursuant to G.S. 15A-1321, the area facility shall so notify the clerk of superior court of the county in which the area facility is located and the clerk shall schedule a rehearing and provide notice in accordance with G.S. 122C-276.1.

(7) Fifteen days before the end of the initial or subsequent periods of commitment for a respondent on conditional release, the attending area facility physician shall review and evaluate the condition of the respondent. If the physician determines that the respondent continues to meet the criteria of G.S. 122C-263(d)(2), the physician shall so notify the clerk of superior court of the county in which the area facility is located and the clerk shall schedule a rehearing and provide notice in accordance with G.S. 122C-276. If the court orders inpatient recommitment and the attending area facility physician determines that the criteria for conditional release set out in G.S. 122C-277(c) continue to exist, the attending physician shall continue the respondent on conditional release for a period not to exceed the period of inpatient commitment. Continuation of conditional release during a second or subsequent inpatient recommitment order shall not require the respondent's return to a 24-hour facility."

Section 3. Article 5 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"§ 122C-274.1. Supplemental hearings; conditional release.

(a) Upon receipt of a request for a supplemental hearing requested pursuant to G.S. 122C-273(e), the clerk shall calendar a hearing to be held within 10 days and shall notify, at least 72 hours before the hearing, the petitioner, the respondent, the respondent's attorney, and the area authority responsible for managing and supervising the respondent's conditional release. Notice shall be provided in accordance with G.S. 122C-264(c). The procedures for the hearing shall be in accordance with G.S. 122C-268.

(b) At the supplemental hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent has violated conditions for release, it shall order the conditional release revoked.

(2) If the court finds by clear, cogent, and convincing evidence that the criteria for conditional release specified in G.S. 122C-277(c) are no longer met and that respondent continues to meet the criteria for inpatient commitment, the court shall order the conditional release revoked.

(3) If the court finds by clear, cogent, and convincing evidence that the respondent continues to meet the conditional release criteria specified in G.S. 122C-277(c) and that the respondent has not violated any condition for release, the court shall order the respondent released under a conditional release program recommended by the 24-hour facility and the designated area authority in accordance with G.S. 122C-277(d)."

Section 4. G.S. 122C-269(a) reads as rewritten:

"(a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, ~~G.S.~~ 122C-268.1, 122C-274.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section."

Section 5. G.S. 122C-264(f) reads as rewritten:

"(f) Except as otherwise provided in this subsection, the ~~The~~ clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this ~~Part; provided that if~~ Part. If the respondent has been committed to a 24-hour facility in a county other than ~~his county of residence~~ the county where the petition was initiated and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county ~~of respondent's residence,~~ where the petition was initiated, where they shall be maintained by

receiving clerk. If a respondent on conditional release has been returned to a 24-hour facility for a hearing under G.S. 274.1, and the records of the proceedings pertaining to the respondent's inpatient commitment hearings, rehearings, and supplemental hearings are maintained by the clerk of superior court of the county where the petition was initiated, then the clerk of superior court shall forward the record of the proceedings to the clerk of superior court in the county of the facility to which the respondent was returned, where they shall be maintained by the receiving clerk."

Section 6. G.S. 122C-264 is amended by adding the following new subsection to read:

"(g) If a respondent is conditionally released under G.S. 122C-273(e) and the conditional release will be supervised in a county other than the county where the petition was initiated, the court shall order venue for further court proceedings to be transferred to the county where the conditional release will be supervised. Upon an order changing venue, the clerk of superior court in the county where the petition was initiated shall transfer the file to the clerk of superior court of the county where the conditional release will be supervised."

Section 7. G.S. 122C-276(c) reads as rewritten:

"(c) Subject to the provisions of G.S. 122C-269(c) and G.S. 122C-273(e), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the district court district as defined in G.S. 7A-133 in which the facility is located or a district court judge temporarily assigned to that district."

Section 8. There is appropriated from the General Fund to the Department of Health and Human Services, Division of Mental Health the sum of seven hundred fifty-three thousand three hundred seventy dollars ($753,370) for the 1999-2000 fiscal year and the sum of three million one hundred sixty-four thousand four dollars ($3,164,004) for the 2000-2001 fiscal year to implement this act.

Section 9. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 298
Committee Substitute Favorable 4/15/99
Proposed Committee Substitute H298-PCS1280-LN

Short Title: Inpatient Commit./Condt'l Release/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE LEGISLATIVE STUDY COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO STUDY THE ISSUE OF CONDITIONAL RELEASE OF CERTAIN PERSONS INVOLUNTARILY COMMITTED TO STATE PSYCHIATRIC HOSPITALS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study whether and under what circumstances certain persons committed involuntarily to State psychiatric hospitals should be released under specific conditions. In conducting the study, the Commission shall consider the following:

(1) The target population for whom conditional release may be appropriate and necessary to protect public safety and enhance patient stability.

(2) The estimated number of persons who could qualify for conditional release.

(3) Criteria for conditional release that are clearly and narrowly defined to ensure that conditional release will apply only to the target population and will not be susceptible to being applied in an overinclusive manner.

(4) Costs of implementing conditional release, including the need for such additional resources at the area mental health authority level as medication, transportation, case management, and administrative start-up costs.

(5) The role, duties, and responsibilities of area mental health authorities, 24-hour facilities, courts, and law enforcement agencies. These roles, duties, and responsibilities should be sufficiently and clearly defined to ensure both efficient coordination and communication among these entities and continuity of care for respondents on conditional release.

(6) The qualifications necessary for personnel monitoring and supervising conditional release and providing treatment to respondents on conditional release.

(7) The mental health system issues and patient disabilities that currently contribute to patient noncompliance with recommended treatment, and treatment approaches and systems designs that would enhance patient compliance, mental health, and quality of life.

(8) Any other issues the Commission deems appropriate for the study.

The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, not later than one week prior to its convening. The Commission's report may include recommended legislation for consideration by the 1999 General Assembly, Regular Session 2000. In conducting its study, the Commission may consider House Bill 298, 2nd Edition, 1999 General Assembly.

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) **Hackney** for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
H.B. 298 A BILL TO BE ENTITLED AN ACT AN TO PROVIDE FOR THE MONITORING AND SUPERVISION OF PERSONS ON CONDITIONAL RELEASE FROM STATE PSYCHIATRIC HOSPITALS, AND TO APPROPRIATE FUNDS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 2),☒ which changes the title, unfavorable as to ~~(original bill)~~ (Committee Substitute Bill # 1), (and recommendation that the committee substitute bill # 2) be re-referred to the Committee on Rules.)

☐ 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

ATTACHMENT V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 297
Judiciary I Committee Substitute Adopted 4/21/99
Proposed House Committee Substitute S297-PCSSA-001

Adopted
5-11-99

Short Title: Ltd. Ptnersp./Prof. Liability Changes. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment or otherwise, for the ~~debts and obligations of~~ debts, obligations, and liabilities of, or chargeable to, the professional corporation ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative.~~ malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed

in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State

applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or~~ the standards of professional conduct applicable to the rendering of the ~~services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities,~~ responsibilities, obligations, or ~~the imposition of~~ sanctions imposed under applicable licensing ~~statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed ~~in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative.~~ by another member, manager, employee, agent or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' ~~includes~~ means every trade, occupation, or profession.

(3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.

(4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.

(6) 'Real property' ~~includes~~ means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G. S. 59-45 reads as rewritten:

"**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsection (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner, and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of~~ the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance~~ malfeasance committed by another partner or by an employee,

agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

~~(c) Subsection (b) of this section does not affect any of the following:~~

~~(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.~~

~~(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.~~

~~(3) The liability of partnership assets for partnership debts and obligations.~~

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to

include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships.

Section 7. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**"

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

(1) ~~the~~ The name of the ~~partnership,~~ partnership.

(2) ~~the~~ The street address of its principal ~~office,~~ office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.

(4) The county in which the registered office is located.

(5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.

(6) A deferred effective date, if any.

(7) The fiscal year end of the partnership.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or~~ by one or more ~~partners authorized by a majority in interest of the~~ partners.

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred twenty-five dollars ~~($100.00).~~ ($125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is ~~filed,~~ filed or the date specified in the application for registration, unless it is

voluntarily withdrawn ~~before then~~ by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by~~ one or more ~~partners authorized by a majority in interest of the partners.~~ of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for ~~registration or renewal of a~~ registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G. S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation ~~"L.L.P."~~ 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59 as created by Section 6 of this act is amended by adding a new section to read:

"**§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars ($200.00). This fee shall be retained by the Secretary of State for the purposes of administering of this Chapter and shall not revert to the General Fund.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

(1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

(2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;

(3) The registered limited liability partnership or foreign limited liability partnership has been

without a registered agent or registered office in this State for 60 days or more; or

(4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among

the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street address of the partnership's principal office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

(4) A brief statement of the business in which the partnership is engaged.

(5) A deferred effective date, if any.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the secretary of state or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation or limited liability company

whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process or demand that is served on the registered agent.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"§ 59-92. Effect of failure to register.

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"**§ 59-93. Activities not constituting transacting business.**

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings

and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"**§ 59-94. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"**§ 59-102. Definitions.**

As used in this Article, unless the context otherwise requires:

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province,

country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to ~~record~~ record, an

appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"**§ 59-301. Admission of ~~additional~~ limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"**§ 59-302. Voting.**

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"**§ 59-303. Liability to third parties.**

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"**§ 59-304. Person erroneously believing himself limited partner.**

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"**§ 59-305. Information.**

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 22. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"**§ 59-503. Sharing income, gain, loss, deduction or credit.**

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed

value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"**§ 59-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the

terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to

exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon

by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-901 reads as rewritten:

"§59-901. Law governing.

Subject to the Constitution of this State, (1) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~limited~~ partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

Section 35. G.S. 59-903 reads as rewritten:

"§ 59-903. Issuance of registration.

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall,

when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 36. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 37. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 38. This act becomes effective October 1, 1999, and applies to suits filed on or after that date, except Sections 2, 3, and 5 apply to liabilities arising on or after the effective date. Sections 4, 6, 7, 8, and 9 apply to registered limited liability partnerships formed on or after January 1, 2000. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after January 1, 2000. Section 27 of this act applies to (i) any limited partnership formed before October 1, 1999, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after October 1, 1999.

ATTACHMENT VI

offered 6/15/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 297
Judiciary I Committee Substitute Adopted 4/21/99
Proposed House Committee Substitute S297-PCSSA-002

Adopted 6-15-99

Short Title: Ltd. Ptnersp./Prof. Liability Changes. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"§ 1-79. Domestic ~~corporations.~~ corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

(1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or

(2) Where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of ~~business.~~ business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

(1) An entity formed under the laws of this State, or

(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment or otherwise, for the ~~debts and obligations of~~ debts, obligations, and liabilities of, or chargeable to, the professional corporation ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative.~~ malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed

in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State

applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or~~ the standards of professional conduct applicable to the rendering of the ~~services.~~ services, or any ~~This Chapter does not relieve individuals of responsibilities,~~ responsibilities, obligations, or ~~the imposition of~~ sanctions imposed under applicable licensing ~~statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company.~~ statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed ~~in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative.~~ by another member, manager, employee, agent or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:

"**§ 59-32. Definition of terms.**

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

(1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.

(2) 'Business' ~~includes~~ means every trade, occupation, or profession.

(3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.

(4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.

(4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.

(5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.

(6) 'Real property' ~~includes~~ means land and any interest or estate in land.

(7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G. S. 59-45 reads as rewritten:

"**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsection (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner, and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of~~ the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership ~~arising~~ that arise from errors, omissions, negligence, malpractice, incompetence, or ~~malfeasance~~ malfeasance committed by another partner or by an employee,

agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. ~~committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.~~

~~(c) Subsection (b) of this section does not affect any of the following:~~

~~(1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.~~

~~(2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.~~

~~(3) The liability of partnership assets for partnership debts and obligations.~~

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to

include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships.

Section 7. G.S. 59-84.2 reads as rewritten:

"**§ 59-84.2. Registered limited liability partnerships.**"

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

(1) ~~the~~ The name of the ~~partnership,~~ partnership.

(2) ~~the~~ The street address of its principal ~~office,~~ office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.

(4) The county in which the registered office is located.

(5) ~~the number of partners, and a~~ A brief statement of the business in which the partnership engages.

(6) A deferred effective date, if any.

(7) The fiscal year end of the partnership.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed ~~by a majority in interest of the partners or~~ by one or more ~~partners authorized by a majority in interest of the~~ partners.

(c) An application for registration as a registered limited liability partnership ~~or for renewal of a registration~~ must be accompanied by a fee of one hundred twenty-five dollars ~~($100.00).~~ ($125.00).

(d) The Secretary of State shall register ~~or renew the registration of~~ a partnership that submits a completed application with the required fee.

(e) A registration is effective ~~for one year after~~ on the later of the date the registration is ~~filed,~~ filed or the date specified in the application for registration, unless it is

voluntarily withdrawn ~~before then~~ by filing with the Secretary of State a written withdrawal notice executed by ~~a majority in interest of the partners or by~~ one or more ~~partners authorized by a majority in interest of the partners.~~ of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for ~~registration or renewal of a~~ registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G. S. 59-84.3 reads as rewritten:

"**§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation ~~"L.L.P."~~ 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59 as created by Section 6 of this act is amended by adding a new section to read:

"**§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

(1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.

(3) The street address and telephone number of its principal office.

(4) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars ($200.00). This fee shall be retained by the Secretary of State for the purposes of administering of this Chapter, however, any funds not used for such purposes by the end of the fiscal year in which the funds were received shall revert to the General Fund.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

(1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

(2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;

(3) The registered limited liability partnership or foreign limited liability partnership has been

without a registered agent or registered office in this State for 60 days or more; or

(4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among

the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(2) The street address of the partnership's principal office.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

(4) A brief statement of the business in which the partnership is engaged.

(5) A deferred effective date, if any.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the secretary of state or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation or limited liability company

whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process or demand that is served on the registered agent.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars ($125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"**§ 59-92. Effect of failure to register.**

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"**§ 59-93. Activities not constituting transacting business.**

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings

and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"§ 59-94. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"§ 59-102. Definitions.

As used in this Article, unless the context otherwise requires:

(1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.

~~(1)~~ (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.

(2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

(3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.

(5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province,

country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.

(6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(9) 'Partner' means a limited or general partner.

(10) 'Partnership agreement' means any valid ~~agreement, written or oral,~~ agreement of the partners as to the affairs of a limited ~~partnership and~~ partnership, the conduct of its ~~business.~~ business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement:~~ A written record that contains:

a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and

d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful ~~business that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"**§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.**

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation.~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to ~~record~~ record, an

appropriate ~~certificate of amendment or cancellation.~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this ~~section~~ subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"**§ 59-301. Admission of ~~additional~~ limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the ~~filing~~ formation of a ~~limited partnership's original certificate of~~ limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance ~~with~~ with, the partnership ~~agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners;~~ agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"**§ 59-302. Voting.**

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"**§ 59-303. Liability to third parties.**

~~(a) Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

~~(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

~~(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

~~(2) Consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(3) Acting as surety for the limited partnership;~~

~~(4) Proposing, approving or disapproving an amendment to the partnership agreement;~~

~~(5) Proposing or voting on one or more of the following matters:~~

~~a. The dissolution and winding up of the limited partnership;~~

~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~

~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~d. A change in the nature of the business; or~~

~~e. The addition, removal or substitution of general partners;~~

~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~

~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~

~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"**§ 59-304. Person erroneously believing himself limited partner.**

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise ~~(i) before the person withdraws from the enterprise, or (ii) before the person gives notice to the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.~~ in the case in which:

(1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and

(2) The third party transacted business with the enterprise before either:

a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or

b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"§ 59-305. Information.

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

"(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;".

Section 22. G.S. 59-402(5) reads as rewritten:

"(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"**§ 59-503. Sharing income, gain, loss, deduction or credit.**

~~Allocation of the income,~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed

value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"**§ 59-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. ~~If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.~~ To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and~~ any damages for breach of the partnership ~~agreement.~~ agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership ~~agreement.~~ agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the

terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may ~~withdraw~~ withdraw, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited ~~partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State.~~ partnership."

Section 28. G.S. 59-604 reads as rewritten:

"**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal.~~ withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him.~~ the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to

exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a ~~limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general~~ partner ceases to be a ~~general~~ partner and to have the power to exercise any rights and powers of a partner upon assignment of all ~~his~~ of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner."

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"**§ 59-801. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;

(2) Written consent of all partners;

(3) An event of withdrawal of a general partner ~~unless at~~ unless:

a. At the time there is at least one other general ~~partner and the written provisions of the partnership agreement permit~~ partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon

by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership ~~to be carried on~~ shall be continued by the remaining general ~~partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within~~ partners; or

b. Within 90 days after the withdrawal, all remaining ~~partners~~ partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or ~~desired; or~~ desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) 90 days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-901 reads as rewritten:

"§59-901. Law governing.

Subject to the Constitution of this State, (1) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~limited~~ partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

Section 35. G.S. 59-903 reads as rewritten:

"§ 59-903. Issuance of registration.

~~(a)~~ If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall,

when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in the office of the Secretary of State the application;

(3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 36. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 37. G.S. 59-1002 reads as rewritten:

"**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1)~~ (i) must have been a partner at the time of the transaction ~~of which he complains~~ that is the subject of the complaint or ~~(2) his~~ (ii) the plaintiff's status as a partner ~~had~~ must have devolved upon ~~him~~ the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 38. Sections 2, 3, and 5 become effective October 1, 1999 and apply to liabilities arising on or after that date. Sections 4, 6, 7, 8, and 9 become effective January 1, 2000 and apply to registered limited liability partnerships formed on or after that date. Section 10 becomes effective January 1, 2000 and applies to foreign limited liability partnerships transacting business in this State on or after that date. Section 27 becomes effective October 1, 1999 and applies to (i) any limited partnership formed before that date, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after that date. The remainder of this act becomes effective October 1, 1999.

SENATE BILL 297: Limited Partnership/Professional Liability Law Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	May 11, 1999	**Summary by:**	O. Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel
Version:	Proposed Committee Substitute S297-PCSSA-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 297 will amend the law related to limited partnerships and will clarify the limit of liability of professionals in limited liability companies, registered limited liability partnerships, and professional corporations. The bill also provides for registration of foreign limited liability partnerships and annual reports by registered limited liability partnerships and foreign limited liability partnerships.***

BILL ANALYSIS: Section 1 of the bill provides that the legal residence of a limited partnership, a limited liability company, and a registered limited liability partnership are determined the same as for a corporation.

Sections 2 and 3 amends the Professional Corporation Act (Chapter 55B) and the Limited Liability Company Act (Chapter 57C), respectively, to clarify that a shareholder, director, or officer of a professional corporation, or a member of a limited liability company, is not individually liable for the professional malpractice of another person in the professional organization but would be personally liable for their own malpractice.

Section 4 adds the definition of a "foreign limited liability partnership" to the Uniform Partnership Act (Chapter 59).

Section 5 also amends the Uniform Partnership Act to clarify the liability of partners in a registered limited liability partnership (RLLP) generally, and to clarify that a partner in a RLLP is not individually liable for the professional malpractice of another partner in the RLLP but would be personally liable for their own malpractice.

Sections 6, 7, 8 create a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a RLLP.

Section 9 requires RLLP's and foreign limited liability partnerships to file annual reports with the Secretary of State in a fashion similar to the annual reports required of corporations, nonprofits, and limited liability companies.

Section 10 provides for the registration of a foreign limited liability partnership in a fashion similar to the registration of a foreign corporation, foreign nonprofit corporation, a foreign limited liability company, and a foreign limited partnership.

Sections 11 through 37 amend the Limited Partnership Act in Article 5 of Chapter 59 and makes numerous clarifying changes regarding limited partnerships. Section 18 deletes the liability of limited partners to third parties under certain circumstances and provides that the limited partner is not liable even

if the limited partner participates in the management of the limited partnership. Section 27 allows for a limited partnership to amend the provisions for allowing a limited partner to withdraw and provides that in a limited partnership where no provisions are made for a limited partner to withdraw, the limited partner may not withdraw until the time for the dissolution and winding up of the limited partnership business.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and generally applies prospectively to actions by covered organizations on or after that date. Sections 4, 6, 7, 8, and 9 apply to registered limited liability partnerships formed on or after January 1, 2000. Section 10 applies to foreign limited liability partnerships transacting business in this State on or after January 1, 2000.

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Modernizing the Limited Partnership Act

Senate Bill 297 - Limited Partnership/Professional Liability Changes

The North Carolina Bar Association, through its Tax and Business Law Sections, reviews the laws governing business associations on an ongoing basis. After much study, Senate Bill 297 was developed to revise the North Carolina Revised Uniform Limited Partnership Act (the "*NC Act*") to make it consistent with the uniform act upon which it is based, with the limited partnership acts of other states and with the Limited Liability Company Act. The North Carolina Association of Certified Public Accountants also supports this legislation.

The Revised Uniform Limited Partnership Act ("*Uniform Act*") was originally adopted by the National Conference of Commissioners on Uniform State Laws in 1976, as a modernization of the Uniform Limited Partnership Act promulgated in 1916. Additional clarifications and improvements were made to the Uniform Act in 1985. The current NC Act was enacted in 1986, but generally was in the form of the 1976 version of the Uniform Act, without the 1985 amendments. Although some amendments have been made to the NC Act since 1986, many of the 1985 revisions to the Uniform Act have not yet incorporated into the NC Act. Some portions date back to the original 1916 version and are, as a practical matter, obsolete.

This legislation incorporates many of the Uniform Act's 1985 amendments into the NC Act. In addition, a few other changes in the bill incorporate provisions from other states' laws that are viewed as being more in accord with modern business practices and expectations. These changes are particularly necessary in light of the enactment of limited liability company statutes by all 50 states and the promulgation by the United States Department of Treasury of the so-called "check-the-box" regulations regarding tax status of unincorporated entities.

We urge your support for these changes which modernize and update our business laws.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

25815 revised June 2, 1999

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 297 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 1074
Judiciary II Committee Substitute Adopted 4/27/99

Short Title: Year 2000 Consumer Protection Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

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

"ARTICLE 43E.

"Affirmative Defense Based on Year 2000 Failure.

"**§ 1-539.25. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

(1) 'Electronic computing device' means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:

a. Is used to capture, store, manipulate, or process data; or

b. Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including, but not limited to, vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.

(2) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.

(3) 'Year 2000 problem' means disruptions in electronic communications or the functioning of electronically controlled equipment resulting or reasonably anticipated to result from erroneous data that is or may be supplied by electronic devices in 1999 or on or after January 1, 2000.

"**§ 1-539.26. Right to affirmative defense based on year 2000 problem.**

(a) A person has an affirmative defense to any claim or action brought against the person if the person establishes that the person's default, failure to pay, breach, omission, or other violation that is the basis of the claim against the person was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and, if it were not for the year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim.

(b) If a person establishes an affirmative defense as set forth in subsection (a) of this section, the court shall dismiss the claim without prejudice and the person or entity making the claim against the person shall not reassert the claim as to which the affirmative defense was asserted for a period of 60 days from the date on which the affirmative defense is granted by the court. Any statute of limitations applicable to the claim is tolled for 90 days upon the granting of the affirmative defense under this section.

(c) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to the year 2000 date change, and does not apply to claims for personal injury or wrongful death.

(d) The granting of the affirmative defense under this section does not impair, extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted; except that the inability of a party to bring the claim based upon the obligation must be delayed as set forth in subsection (b) of this section.

(e) A credit reporting agency operating in this State shall not report any negative credit information resulting from the failure of an electronic computing device to process financial information and other information or the inability of the consumer to transact financial business and make payments due to the failure of an electronic computing device to compute, recognize, or timely process the year 2000 date change."

Section 2. This act is effective when it becomes law and shall apply to actions accruing on or after that date. The act expires October 1, 2000.

SENATE BILL 1074:
Year 2000 Consumer Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Reeves
Date:	June 1, 1999	**Summary by:**	Susan L. Hayes, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***Senate Bill 1074 provides an affirmative defense based on a year 2000 problem.***

BILL ANALYSIS: Senate Bill 1074 creates a new G.S. 1-539.25 and 1-539.26 which provide certain persons with an affirmative defense to claims or actions resulting from a year 2000 problem.

The bill allows a person against whom a claim or action is filed to assert an affirmative defense if the person's default, failure to pay, breach, omission or other violation that is the basis of the claim was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and if it were not for the year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim.

If the affirmative defense is established, the court must dismiss the claim without prejudice and the claim may not be reasserted for 60 days. If the affirmative defense is granted, the statute of limitations applicable to the claim is tolled for 90 days.

The defense does not apply to transactions where a default has occurred before any disruption attributable to a year 2000 problem, and does not apply to claims for personal injury or wrongful death.

The granting of the affirmative defense does not relieve the person of the underlying obligation on which the claim is made.

A credit reporting agency operating in this State shall not report any negative credit information resulting from a year 2000 problem.

This act is effective when it becomes law and applies to actions accruing on or after that date. The act expires October 1, 2000.

S1074-SMSA-001

ATTACHMENT XII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1074

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

S1074-ASA-059 Page 1 of __

Date 6-15 ,1999

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative ALEXANDER

moves to amend the bill on page 2, lines 33-38, by rewriting the lines to read:

(e) An individual who has established an affirmative defense as set forth in subsection (a) of this section may dispute directly with a credit reporting agency operating in this State any item of information in the individual's consumer file relating to the subject of the affirmative defense. The credit reporting agency shall comply with the requirements of the federal 'Fair Credit Reporting Act' in responding to the dispute. If requested by the individual, the credit reporting agency shall include the individual's statement of explanation regarding an item of information that the consumer reporting agency denies is inaccurate or a statement concerning the content of the individual's consumer file. The statement shall not exceed one hundred words and the credit reporting agency shall not charge the individual a fee for the inclusion of this statement in the individual's consumer file."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XIII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1074 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Alexander
Sen.)

moves to amend the bill on page 2, line 40

( ) WHICH CHANGES THE TITLE

by ~~deleting~~ rewriting the line to read:

"actions accruing on or after that date. The act expires October 1, 2000, except that any affirmative defense raised in a pending civil action pursuant to this act remains effective until the ~~completion~~ conclusion of that action."

SIGNED Martha B. Alexander

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 1074 A BILL TO BE ENTITLED AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.

☐ 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 1074
Judiciary II Committee Substitute Adopted 4/27/99
Proposed House Committee Substitute S1074-PCS8614-SA

Short Title: Year 2000 Consumer Protection Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

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

"ARTICLE 43E.

"Affirmative Defense Based on Year 2000 Failure.

"**§ 1-539.25. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

(1) 'Electronic computing device' means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:

a. Is used to capture, store, manipulate, or process data; or

b. Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including, but not limited to, vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.

(2) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.

(3) 'Year 2000 problem' means disruptions in electronic communications or the functioning of electronically controlled equipment resulting or reasonably anticipated to result from erroneous data that is or may be supplied by electronic devices in 1999 or on or after January 1, 2000.

"§ 1-539.26. Right to affirmative defense based on year 2000 problem.

(a) A person has an affirmative defense to any claim or action brought against the person if the person establishes that the person's default, failure to pay, breach, omission, or other violation that is the basis of the claim against the person was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and, if it were not for the year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim.

(b) If a person establishes an affirmative defense as set forth in subsection (a) of this section, the court shall dismiss the claim without prejudice and the person or entity making the claim against the person shall not reassert the claim as to which the affirmative defense was asserted for a period of 60 days from the date on which the affirmative defense is granted by the court. Any statute of limitations applicable to the claim is tolled for 90 days upon the granting of the affirmative defense under this section.

(c) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to the year 2000 date change, and does not apply to claims for personal injury or wrongful death.

(d) The granting of the affirmative defense under this section does not impair, extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted; except that the inability of a party to bring the claim based upon the obligation must be delayed as set forth in subsection (b) of this section.

(e) An individual who has established an affirmative defense as set forth in subsection (a) of this section may dispute directly with a credit reporting agency operating in this State any item of information in the individual's consumer file relating to the subject of the affirmative defense. The credit reporting agency shall comply with the requirements of the federal 'Fair Credit Reporting Act' in responding to the dispute. If requested by the individual, the credit reporting agency shall include the individual's statement of explanation regarding an item of information that the consumer reporting agency denies is inaccurate or a statement concerning the content of the individual's consumer file. The statement shall not exceed 100 words and the credit reporting agency shall not charge the individual a fee for the inclusion of this statement in the individual's consumer file."

Section 2. This act is effective when it becomes law and shall apply to actions accruing on or after that date. The act expires October 1, 2000, except that any affirmative defense raised in a pending civil action pursuant to this act remains effective until the conclusion of that action.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-001

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class on and shall be sentenced to a minimum f 70 mon hs and a maximum term of 84 in the State's prison and shall be fi t less t an fifty thousand dollars ($50,0

c. Is 10,000 or more dosa ts, or e uivalent quantity, such person be punis ed as a Class D felon and sh sente d to a minimum term of 175 mo nd a max mum term of 219 months in the S prison nd shall be fined not less tha hundred housand dollars ($200,000).

(3) Any person who sells, m tures, elivers, transports, or possesses ams or more of cocaine and any salt, isom alts of isomers, compound, derivative, or p tion thereof, or any coca leaves and any s isomer, alts of isomers, compound, derivati r preparation of coca leaves, and any sal somer, salts of isomers, compound, deriva or preparation thereof which is chemically alent or identical with any of these substance cept decocainized coca leaves or any extractio coca leaves which does not contain cocaine) or mixture containing such substances, shall be gui of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. If 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. If 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of nonths and a maximum term of 279 months e State's prison and shall be fined not than five hundred thousand dollars ($500,

(4a) Any person who sells, manufactu delivers transports, or possesses 100 tablet)sules, c other dosage units, or the equivale ıntity, o more, of Lysergic Acid Diethylamide, ıy mixtur containing such substance, shall l lty of felony, which felony shall be known affickin in Lysergic Acid Diethylamide". If antity o such substance or mixture involved:

a. Is 100 or more dosage units, equivalent quantity, but less than 500 do units, or equivalent quantity, such pe shall be punished as a Class G felon shall be sentenced to a minimum term of ıths and a maximum term of 42 months i e State's prison and shall be fined ı less than twenty-five thousand dollars ($2 0);

b. Is 500 or more dosage units, equivalent quantity, but less than 1,000 dc units, or equivalent quantity, such per shall be punished as a Class F felon shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund; however, if the analysis was performed by the State Bureau of Investigation Crime Laboratory the funds shall be deposited into the Department of Justice Special Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"§ 90-91. Schedule III controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name,

chemical name .rade name designated. In determining that a substance com hin this schedule, the Commission shall find: a potential abuse le ss than the substances listed in Schedules I a current y accepted medical use in the United States; and a ay lead t o moderate or low physical dependence or high psy(.cal dep ndence. The following controlled substances ar(ided in t his schedule:

(a) Repeal(Session I ws 1973, c. 540, s. 5.

(b) Any r al, comp und, mixture, or preparation which contains any city of the following substances having a depressant e on th central nervous system unless specifically (ed or lis ed in another schedule:

1. ubstance which contains any quantity of a ative of barbituric acid, or any salt of a ative of barbituric acid.

2. hexadol.

3. led by Se sion Laws 1993, c. 319, s. 5.

4. gic acid.

5. gic acid amide.

6. prylon.

7. ndiethylmethane.

8. nethylmethane.

9. nmethane.

9a. tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.

or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include

one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence

of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and

32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. Sections 1 and 3 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

6-15-99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-002

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is <u>methamphetamine, amphetamine,</u> phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class C~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in

Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.
9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.
10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.
11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.

2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic

steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(1) Ketamine."

Section 4. Sections 1 and 3 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XVIII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 888 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Alexander
Sen.)

moves to amend the bill on page 18, line 11-14

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

" Section 4. This act becomes effective December 1, 1999 and applies to offenses committed on or after that date.

SIGNED Martha B. Alexander

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

FISCAL ANALYSIS MEMORANDUM

DATE: June 11, 1999

TO: Representative Joe Hackney
Chairman, House Judiciary 1

FROM: Jim Mills
Fiscal Research Division

RE: SB 888 – Proposed House Committee Substitute (001) (Changes from original fiscal note on SB 888 are in BOLD Print)

FISCAL IMPACT

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

No direct fiscal impact due to this bill for the Department of Correction because DOC can absorb the additional inmates within current prison bed capacity. However there is an indirect cost to add additional inmates to the prison system since otherwise funds could be used for other purposes; see pages 3 and 4 of this note for calculation of that cost.

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
GENERAL FUND					
Correction					
Recurring		No Impact			
Nonrecurring					
Judicial					
Recurring		No estimate available but potential fiscal impact			
Nonrecurring					
Justice *					
a. Lab Analysis by SBI					
General Fund	**($184,500)**	**($226,935)**	**($279,130)**	**($343,329)**	**($422,295)**
Special Fund	**$184,500**	**$226,935**	**$279,130**	**$343,329**	**$422,295**
b. Lab Cleanup		**No estimate available**			
TOTAL EXPENDITURES					

***Section 2 of SB 888 – Restitution. Restitution that now goes to General Fund for lab analysis work would be diverted to a Special Fund for Justice. Restitution for cleanup of clandestine labs would be a new requirement and would generate new money for law enforcement. The fiscal impact of Section 2 of the bill was inadvertently omitted from the original fiscal note (4-26-99) on the assumption that the restitution change was technical in nature.**

POSITIONS: None

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

EFFECTIVE DATE: December 1, 1999 (Criminal Penalty Changes); Section 2 on restitution is effective when it becomes law.

BILL SUMMARY: Amends G.S. 90-95 (d) (2) to make it a Class I felony to possess any amount of amphetamine/methamphetamine (Schedule II drugs). Amends G.S.90-95(d2) to make it a Class H felony to possess or distribute an immediate precursor chemical and adds six new chemicals to the list of immediate precursor chemicals. Also amends 90-95(h) to repeal (3a), trafficking in amphetamine and then incorporate (3a) into subsection (3b), trafficking in methamphetamine; increases sentencing classes for (3b) to: Class G Felony to Class F; Class F Felony to Class E Felony; Class D Felony to Class C.

(New) PCS 001 ads section which adds Ketamine to the list of Schedule III controlled substances. Sale of Ketamine would, like other Schedule III substances, be a Class H felony. Intent to manufacture, deliver or sell would be Class I felony. Possession of Ketamine, like other Schedule III substances, would be a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

The following chart shows, for the end of each fiscal year, prison beds estimated to be available, the projected inmate population, the deficit or surplus of available beds compared to population, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (In the following chart, rows 4 and 5 are specific to this bill.)

	June 30 2000	June 30 2001	June 30 2002	June 30 2003	June 30 2004
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	31,467	31,472	31,936	32,750	33,685
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	34,493	34,717	34,717	34,717	34,717
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+3,026	+3,245	+2,781	1,967	+1,032
4. No. of Projected Additional Inmates Due to this Bill	3	12	12	12	12
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 12 inmates to the prison system by the end of FY 2003-04. There is no direct fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. However, even though costs can be absorbed due to available bed capacity, there is a daily cost for each inmate added to the system that will have to be expended in lieu of using available funds for other purposes or reverting these funds. The average cost per day for one inmate was the following in 1997-98:

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1999 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds based on Department of Correction estimates of available prison bed Expanded Operating Capacity (EOC) for beds completed or funded and under construction as of 2/19/99. The EOC is the number of beds above 100% capacity (Standard Operating Capacity). The EOC is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include any State prison beds that are contracted through local jails or any beds that would be lost to the system if any proposals to close small prisons are approved by the General Assembly during the 1999 Session.

DAILY INMATE COST

Custody Level	Minimum	Medium	Close	Statewide Average
[redacted]y Cost Per [redacted]nate (97-98)	$51.27	$67.44	$78.64	$62.41

These costs include security, inmate costs (food medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

Calculation of Prison Bed Projections

1. Class I felony to possess amphetamine/methamphetamine –AOC database contains only one specific breakout for Schedule II drugs, cocaine but SBI records show one to two percent of Schedule II drugs are amphetamine/methamphetamine. Assuming 1.5 percent, there would be 33 convictions with two active convictions of 5.5 months each or one new prison bed in year one. With probation revocations, it is assumed there would be total need of seven prison beds each year for years 2 through 5.

2. Class H felony to possess or distribute an immediate precursor chemical and add six new chemicals --- Currently, there are three convictions per year for seizing clandestine laboratories, according to the SBI. Assuming adding six new chemicals would result in 10 convictions per year and three offenders receiving active sentences, the result would be two prison beds the first year and three beds in subsequent years for probation revocations for at total of five beds for years 2 through 5.

3. Increase penalties for trafficking in amphetamine and methamphetamine – The number of convictions is small [redacted]his bill would primarily affect sentence length for these offenders. There would be no impact until at least [redacted]06-07, when it is assumed the number of beds needed would be four and eight in 2007-08 to account for longer sentences.

4. (New PCS001) Ketamine – The PCS amends the bill to add Ketamine to the list of Schedule III controlled substances. Sale of Schedule III substances is a Class H felony – there were no offenders in the 1997-98 AOC database whose most serious conviction was for this offense. Manufacture, sell or deliver, or possess with intent to manufacture is a Class I felony for Schedule III - -only one offender was identified in the AOC database for this Schedule III offense. Possession of Schedule III substance is a Class 1 misdemeanor – 19 offenders were identified in the AOC database, still a relatively insignificant number.

In addition, the SBI lab notes they have had only six cases in the last 6 months where Ketamine was identified in lab analyses, although since Ketamine is not currently a controlled substance, there is no overt effort to identify this substance.

Therefore, given the small number of Schedule III convictions, the small number of Ketamine cases, and the available prison capacity it is anticipated that adding Ketamine as a drug violation will have no fiscal impact on the prison system.

NOTE: This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly. Other criminal penalty bill enhancements being considered by the General Assembly reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect [redacted]all criminal penalty bills on the prison system.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2004. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	2004-5	2005-6	2006-7	2007-8
Inmates Due to This Bill	12	12	16	24
Available Beds	117	-757	-1,708	-2,557
New Beds Needed	0	12	16	24

Judicial Department

The Judicial Department indicates that it is likely this bill will have a fiscal impact. In each criminal penalty change outlined in the bill summary, the criminal penalty is increased over the current penalty. In the past, these increases have led to more trials and in turn, increased costs for court personnel and indigent defense. However, Administrative Office of the Courts (AOC) is unable to accurately determine the number of phetamines/methamphetamine related charges except for criminal trafficking.

In these cases, 81 defendants were charged in 1998. However, AOC does not have the data to determine how many of these defendants would be charged with the higher level felonies based on the quantities of drugs specified in the bill.

While not likely to be significant, there will be fiscal impact on the court system due to this bill.

For adding Ketamine to the list of Schedule III Controlled Substances, (PCS001), given the small number of Schedule III cases generally and assuming a small number of Ketamine cases, there is likely to be little or no impact on the Judicial Department.

Department of Justice (not included in original fiscal note)

Section 2 on Restitution revises G.S. 90-95.3 (b). This Statute currently authorizes the court ("may") to direct that restitution of $100 be paid to the State for the expense of analyzing controlled substances as part of an investigation that leads to conviction. Currently, these funds go to the General Fund. Under SB 888, these funds would be placed in a Special Fund and then allocated to the Department of Justice, State Bureau of Investigation Crime Lab. This change will lead to a loss of revenue to the General Fund.

Funds collected due to G.S. 90-95.3(b) have increased from $83,545 in 96-97 to $149,466 year to date in 98-99. Estimates of fiscal impact in the Table on page 1 assume 23% annual growth in revenue collected and erted from the General Fund. This is the same percentage growth rate that occurred between 1997-98 and 1998-99.

Section 2 also adds a new subsection (c) to G.S. 90-95.3. This new subsection mandates the court to order restitution for the cost of cleaning up clandestine laboratories. The new language states that restitution will be paid to law enforcement agencies. In most cases, this will be the SBI Crime Lab. There is no information available on the cost of cleaning up clandestine laboratories so there is no estimate available of fiscal impact. However, the Department of Justice indicates that one incident could cost as much as $30,000 to $40,000. To–date, there have only been several cleanup incidents a year, usually as the result of an explosion.

Unlike Subsection (b), Subsection (c) does not state that a Special Fund will be created for deposit of any restitution funds that are collected. It appears from the wording of Subsection (c) that creation of a Special Fund is intended, but clarifying language is advised.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice; and, Office of State Budget and Management.

TECHNICAL CONSIDERATIONS: Unlike Subsection (b), Subsection (c) does not state that a Special Fund will be created for deposit of any restitution funds that are collected. It appears from the wording of the Subsection that creation of a Special Fund is intended, but clarifying language is advised.

FISCAL RESEARCH DIVISION 733-4910

HOUSE JUDICIARY I COMMITTEE

June 17, 1999

Agenda

Senate Bill 746 – Structured Settlement Protection Act
Senator Cooper

HOUSE JUDICIARY I COMMITTEE
June 17, 1999
Minutes

The House Judiciary I Committee met on Thursday, June 17, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Boyd-McIntyre, Ellis, Gardner, Gray, Moore, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT**, would be further discussed during the meeting. A proposed committee substitute, (Attachment II), was adopted for the purpose of discussion by the committee during the June 10, 1999 meeting. He stated that Senator Cooper, the sponsor of the Senate version of the bill was unable to attend the meeting, but that the discussion would continue. (Representative Hackney introduced the House version of the bill). A copy of a bill analysis prepared by O. Walker Reagan, Staff Attorney, and Susan L. Hayes, Committee Counsel is attached, (Attachment III). Chairman Hackney reminded the members that several people had addressed the committee during the June 10 meeting and that certain issues had been identified that need to be discussed. One issue involved what the standard should be for the review by the judge.

Representative Nesbitt stated that he planned to offer amendments to the bill.

Representative Ellis was recognized and spoke in opposition to regulating the people who received the structured settlements, but noted a possible need for regulation of the industry to some degree, along with possible regulation of the payment of the structured settlement.

Representative Gray asked if any consideration had been given to sending the bill to a subcommittee for further study. Representative Hackney replied that the interested parties had been asked to negotiate, but that they had been unable to reach an agreement. He noted time restraints, but added that anyone could make a motion to send the bill to a subcommittee.

Committee discussion followed.

Representative Ellis moved to place the bill in a study. The motion failed.

Representative Boyd-McIntyre asked if the sponsor had considered a sunset on the bill. Representative Hackney replied that he had not, but that was a possible solution.

Representative Alexander was asked to preside over the meeting during the offering of amendments.

Representative Nesbitt offered an amendment, (Attachment IV), and moved its adoption. He stated that the amendment would change the standard to "best interest of the payee." He said that this is a standard that is understood by the courts and the lawyers.

Representative Hackney spoke in support of the amendment.

Mr. Dave Horne, Smith-Anderson Law Firm, was recognized and agreed that the "best interest" standard is something that they agree should be done, but added that the words "and payees dependents" should be added. He further noted that the elimination, entirely, of the

federal hardship standard could potentially create a conflict between state law and federal law. He said that if the federal government acts, as he thinks they will, the federal standard should be maintained.

Mr. Sandy Sands, National Association of Structured Settlements, spoke against the suggestions made by Mr. Horne.

Representative Ellis spoke against accommodating what Congress "might" do.

Representative Hackney stated that he felt the amendment should be adopted in the way proposed by Representative Nesbitt, and if at some further point an additional amendment is necessary for the reasons suggested by Mr. Horne, another amendment could be offered.

Representative Thompson asked for a definition of "best interest." Representative Hackney replied that it was a wide-open standard that means "helps them, but does not hurt them," and is up to the judge to determine.

The amendment was before the committee. Following vote of the committee, the amendment was adopted.

A copy of a letter distributed to the committee by the Office of the Attorney General is attached, (Attachment V).

No further action was taken on the bill, and the meeting was adjourned.

Joe Hackney
Representative Joe Hackney, Chairman

Emily W. Reynolds
Emily Reynolds, Committee Assistant

ATTACHMENT I

Photocopy

VISITOR REGISTRATION SHEET



JUDICIARY I — Name of Committee

June 17, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Watters	Attorney Generals Office
John M May	NC Bus Council
Phil Teele	Atty Gen Office
[illegible]	NCSR
Randy Dyer	N.C. Structured Settlement Trade Assn / Wash. DC
Alan Miles	Bailey & Dixon
[illegible]	Jordan Price Wall
[illegible]	NCSR
[illegible]	Cap Sta
Barrett Brewer	Capitol Strategies
Charles Cromer	NCATL
Rob PASchal	Young Moore & Henderson
Charlie Diehl	NC Outdoor Advertising Association

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBTITUTE
S746-CSRN-001
Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible

administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transferee has established that the transfer is necessary to enable the payee, the payee's dependents, or both to avoid imminent financial hardship, and the transfer should not be expected to subject the payee, the payee's dependents, or both to undue financial hardship in the future; provided, however, that if, at the time the payee

and the transferee entered into the transfer agreement, a federal hardship standard was in effect, then, in lieu of the foregoing finding, the court or responsible administrative authority must make an express finding that the transfer qualifies under such federal hardship standard;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that if, at the time the payee and the transferee entered into the transfer agreement, a favorable tax determination was in effect, then the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this act, which previously approved the structured settlement; and

b. Signed originals of all approvals required under sub-subdivision a. of this subdivision have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this act, and originals or copies have been furnished to all interested parties;

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy

of such notice with the court or responsible administrative authority;

(7) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed the annual percentage rate permitted under G.S. 25A-15(b)(4) calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;

2. Under whose laws a structured settlement agreement was approved by a court or responsible administrative authority; or

3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) 'Dependents' include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(5) 'Favorable tax determination' means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitely establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the Internal Revenue Code, United States Code Title 26, as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the Internal Revenue Service;

c. A private letter ruling by the Internal Revenue Service with respect to such transfer; or

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the Internal Revenue Service has acquiesced;

(6) 'Federal hardship standard' means a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(8) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(9) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(11) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) 'Settled claim' means the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether

from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(18) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(19) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(8), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.11(a);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"§ 1-543.15. No waiver; penalties.

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the

transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article.

"§ 1-543.16. Construction.

Nothing contained in this Article shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

ATTACHMENT III

SENATE BILL 746:
Structured Settlement Protection Act

BILL ANALYSIS

Committee: House Judiciary I
Date: May 20, 1999
Version: 2nd Edition

Introduced by: Sen. Cooper
Summary by: O. Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel

SUMMARY: ***Senate Bill 746 would enact the Structured Settlement Protection Act to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable.***

CURRENT LAW: There is no specific statutory law in North Carolina which governs the transfer or assignment of structured settlement proceeds to other third parties. Structured settlement agreements are either contracts between two parties or agreements of the parties recognized by the court and enforced by order of the court as a consent agreement. Assignment of those rights would typically be as a matter of contract.

BILL ANALYSIS: Senate Bill 746 would require that an agreement transferring or assigning the rights to receive structured settlement proceeds in the future must be approved by the court or administrative agency authorized to approve the settlement and must meet minimal disclosure requirements as to the effect and costs of the assignment.

Section 1 of the bill creates a new Article 44B in Chapter 1 to be known as the NC Structured Settlement Protection Act. All references are to G.S. 1-543.__.

Section .11 sets out the requirements that must be satisfied before a transfer of structured settlement rights is effective. This section requires that the transfer be approved in advance by the court or responsible administrative authority based upon a judicial or administrative finding that:

1. The transfer complies with the law.
2. The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures of the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
3. The transferee has established that the transfer is necessary for the to avoid an imminent financial hardship and would not subject the payee or the payee's dependents to future financial hardship.
4. The payee has received independent professional advice on the effects of the transfer.
5. If the transfer is contrary to the terms of the structured settlement, all the parties to the settlement and the court that originally approved the settlement have approved the transfer.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 746

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

S746-ASA-061 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
S746-CSRN-001

Representative_____

moves to amend the bill on page 2, line 38-44, through page 3, lines 1-6
by rewriting the lines to read:
"(3) The transfer is in the best interest of the payee."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT V

State of North Carolina

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

MICHAEL F. EASLEY
ATTORNEY GENERAL

CONSUMER PROTECTION
919-716-6000
Fax: 919-716-6050

June 17, 1999

Representative Joe Hackney
Chairman, House Judiciary I Committee
Room 2207, Legislative Office Building
Raleigh NC 27601-1096

Re: Structured Settlement Protection Act (SB 746)

Dear Representative Hackney:

This letter is to voice the Attorney General's strong support for the Structured Settlement Protection Act. This bill is a much needed consumer protection measure to address abuses which occur when factoring companies purchase the rights to future payments from settlements entered into by North Carolina residents. These abuses include steep discount rates, repeated contact with the consumers to induce the sale of further payments after an initial transaction, abusive indemnity provisions in favor of the factoring companies and the entry of confessions of judgments in foreign jurisdictions for the full amount purchased if payments to the factoring company are interrupted for any reason.

The provisions of the Structured Settlement Protection Act, which compel disclosures, provide for Court approval, and limit the discount rate, will prevent the abuses noted above. These provisions allow consumers flexibility to deal with circumstances not anticipated at the time of the settlement and assure that such North Carolina consumers are treated fairly.

Proposals by the factoring companies to permit loans secured by structured settlement payments or purchases of five or ten thousand dollar lump sums without the consumer protections in the bill would circumvent the whole purpose of the legislation so as to make it virtually meaningless. I urge you to pass the Structured Settlement Protection Act with meaningful consumer protections which include disclosure, Court approval of all purchases and loans, and a strict discount rate cap.

We would be happy to discuss this matter with you should you have any questions.

Very truly yours,

Alan S. Hirsch
Special Deputy Attorney General

cc: House Judiciary I Committee Members

HOUSE JUDICIARY I COMMITTEE

June 22, 1999

Agenda

Senate Bill 34 - Emergency Shelter/Health Facility Immunity
Senator Cochrane

Senate Bill 746 - Structured Settlement Protection Act
Senator Cooper

Senate Bill 888 - Drug Law Amendments
Senator Cooper

HOUSE JUDICIARY I COMMITTEE
June 22, 1999
Minutes

The House Judiciary I Committee met on Tuesday, June 22, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Clary, Ellis, Insko, Miller, Moore, Nesbitt, Redwine, and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Senate Bill 888, AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES, was the first bill considered by the committee. The bill was explained and a committee substitute was adopted during the May 27, 1999 meeting of the committee. A second proposed committee substitute, (Attachment II), was adopted for discussion during the meeting held on June 15, 1999. A third proposed committee substitute, (Attachment III), was distributed. The committee substitute incorporated the effective date amendment that was adopted on June 15.

Representative Nesbitt moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Representative Moore offered an amendment, (Attachment IV). The amendment clarifies that certain devices that could be used for illegal purposes are drug paraphernalia. Wooden pipes are not included in the list.

Mr. Tom Moss, Chief of Police, Town of Garner, and President, North Carolina Association of Chiefs of Police, was recognized to address the committee. Mr. Moss offered support for the amendment, noting that a loophole exists making enforcement difficult.

Ms. Susan Hayes, Committee Counsel, was recognized to give further explanation of the amendment and to comment on the constitutionality of declaring of items that can be used for lawful and unlawful purposes to be illegal under state law. Ms. Hayes replied that she did not know of a constitutional reason that this could not be done, but would need to research the question more carefully.

Senator Cooper was recognized for further comment on the bill. He offered support for the amendment, but reserved the right to make certain that the amendment was constitutional.

Committee discussion followed.

Representative Insko stated that she would like to offer a perfecting amendment to include plastic or ceramic pipes.

Ms. Fran Preston, North Carolina Retail Merchants Association, (NCRMA) was recognized. Ms. Preston stated that they understand the need for the bill and have worked with the sponsor to make sure that the bill was crafted in a way that will accomplish its intent without doing any harm to legal products.

Chairman Hackney asked if the NCRMA had a member who was a tobacconist who might be available as an expert to the committee. Ms. Preston replied that they would try to find someone who could address the committee.

Several questions were posed by the members of the committee regarding the legal use of various objects addressed in the bill. Chairman Hackney announced that the bill would be sent to a subcommittee. The members of the subcommittee included Representatives Moore, Chairman, Nesbitt and Thompson.

A copy of an updated fiscal analysis is attached, (Attachment V).

Senator Cochrane was recognized to continue the discussion of **Senate Bill 34, AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OF SERVICES DURING DISASTERS AND EMERGENCIES,** (Attachment VI). The bill was explained and discussed during the June 6, 1999 meeting of the committee. A proposed House committee substitute was distributed, (Attachment VII). Senator Cochrane stated that the committee substitute addressed concerns that arose during the initial discussion of the bill. She pointed out that the words "elderly or medically dependent" were added on page 1, line 16, and the words "for which the facility or home care agency does not receive compensation greater than actual costs" on page 2, line 17.

Representative Blue questioned the duty owed to someone to whom one is extending an essentially free service. He questioned how this differs from a normal duty that one owes.

Representative Nesbitt asked for clarification regarding who would be receiving the immunity.

Ms. Hayes replied that the facilities include nursing homes, rest homes and home health care type agencies.

Representative Redwine asked if hospitals should be added.

Mr. Steven Glenn, Deputy Chief of Operations, North Carolina Division of Emergency Management, stated that most hospitals involved in evacuations are county-owned, county-run hospitals and fall under the same immunity as county government during a state of disaster or emergency.

Considerable discussion followed regarding liability and immunity. No action was taken on the bill.

The meeting was adjourned at 10:55.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 22, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laurie Reeves	Pfizer, 139 Greenwich Rd Statesville NC 28677
Mike Canada	Pfizer, 76-B N. Lexington Ave Asheville, NC 28801
MATT THOMAS	" 754 Ideal Way Charlotte NC 28203
TOM MOSS	NC POLICE CHIEFS ASSN P.O. BOX 446 GARNER 27529
Lee Matthews	Pfizer 520-T Park Ridge Ct. Winston-Salem 27104
Betsy Mileski	Pfizer 12940 Candgwith Cove Huntersville NC 28078
CAMERON MEEK	PFIZER 3734 Carnegie Ln Raleigh 27612
Wendy Wright	Pfizer 401 E. Lane St. Raleigh 27601
PRICE WHITFIELD	PFIZER 700 BURROUGHS DR. WILMINGTON 28412
Anthony Hall	Pfizer 3160 N. Elm St, Greensboro, NC 27408
Dedel Hickman	Pfizer 408 Tyremouth Dr. Cary 27513
KARL Buchanan	Pfizer 4501 Draycroft Pl. Fuquay Varina, NC 27526
BRIAN STREET	PFIZER 3021 HUNTERS BLUFF DR, 27606
TONY HARTMAN	PFIZER 125 GROSVENOR RD. RALEIGH, NC 27615
Karen Gottovi	DHHS – DOA
David Chapman	Pfizer - 11012 Brush Hollow Road Matthews, NC 28105
Paige J McCann	Pfizer - 20136 Washam St. Cornelius NC 28031
Rae Ponton	Pfizer - 8431-207 Compatible Way Charlotte NC 28262
TEJAN R. HICHKAD	PFIZER - 15043 ANNAN COURT, CHARLOTTE, NC 28277
Ben Brow	New Hanover Special Needs Task Force, Wilm. NC.
Judy Smith	DHHS – Aging
Terry Miller	New Hanover Special Needs Task Force Wilm. NC.
Steven Glenn	NC Emergency Management 205 W. Cabarrus St. Raleigh, NC 27601
Mike SPRAYBERRY	" " "
Jeffrey Grieco	Natl Assoc of Settlement Purchasers, Wash. DC.
BILL WINGARDNER	Pfizer Inc Reston VA
CHRIS DOVEL	Pfizer Inc Raleigh, NC

VISITOR REGISTRATION SHEET

JUDICIARY 1 — Name of Committee

6-22-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R.E. DAVENPORT	PFIZER INC. PO BOX 67 LOUISVILLE, NC 27023
Bonnie Cramer	Dept of Health & Human Services
George Farthing	Insurance News Service 615 Willard Place Raleigh 27603
Phil Telfer	Atty Gen. Office
MARK FOSTER	PFIZER 18336 CENTER COURT DR DAVIDSON, NC 28036
	AHHC
Greg Roche	Pfizer Inc Durham NC
JOHN CHURCH	PFIZER INC. GREENSBORO NC
Gary Woodward	Pfizer Inc - Matthews, NC
Wayne Church	Pfizer Inc - Kernersville, NC
Marty Spalo	PFIZER INC. - MATTHEWS, N.C.
DAVID LOWMAN	Hunton & Williams, Richmond
RANDY DYER	NSSTA, 1420 16TH ST. Washington DC 20036
Debbie Rosen RN	PFIZER INC. ~~POB 11~~ 11708 Lacesferry Ct Raleigh NC 27614
Bob Price	Jordan Price Wall
Robert PASichal	Young Moore & Henderson
Alan Miles	Bailey & Dixon LLP
	NCRMA
	NCFPC
FRAN PRESS	NCRMA
ANDY ELLER	NCRMA
JOHN F. MCARTHUR	GENERAL ELECTRIC
Eddie Caldwell	HMCCC, GA.
	Fraternal Order of Police
Bryan Beatty	DOJ
Bill McAnulty	FSNC

VISITOR REGISTRATION SHEET

JUDICIARY I

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-002

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"§ 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class C~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in

Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.
9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.
10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.
11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.

2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic

steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. Sections 1 and 3 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-003

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is <u>methamphetamine, amphetamine,</u> phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in

Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.
9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.
10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.
11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.

2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic

steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 888

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

S888-ASA-068 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
S888-PCSSA-003

Representative Moore

moves to amend the bill on page 1, line 2,
by rewriting the line to read:
"AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA."

and on page 18, line 10-11,
by inserting between the lines a new section to read:
"Section 4. G.S. 90-113.21 reads as rewritten:
'**§90-113.21. General provisions.**
(a) As used in this Article, "drug paraphernalia" means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body. "Drug paraphernalia" includes, but is not limited to, the following:
(1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
(2) Kits for manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
(3) Isomerization devices for increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances;
(5) Scales and balances for weighing or measuring controlled substances;
(6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose for mixing with controlled substances;
(7) Separation gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;
(8) Blenders, bowls, containers, spoons, and mixing devices for compounding controlled substances;
(9) Capsules, balloons, envelopes and other containers for packaging small quantities of controlled substances;
(10) Containers and other objects for storing or concealing controlled substances;
(11) Hypodermic syringes, needles, and other objects for parenterally injecting controlled substances into the body;
(12) Objects for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, such as:
a. ~~Metal, wooden, acrylic, glass, stone, plastic, or ceramic~~ Wooden pipes with or without ~~screens, permanent screens, hashish heads, or punctured metal bowls;~~ screens; and
~~b. Water pipes;~~
~~c. Carburetion tubes and devices;~~
d. Smoking and carburetion ~~masks;~~ masks.
~~e. Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~
~~f. Miniature cocaine spoons and cocaine vials;~~
~~g. Chamber pipes;~~
~~h. Carburetor pipes;~~
~~i. Electric pipes;~~
~~j. Air-driven pipes;~~
~~k. Chillums;~~
~~l. Bongs;~~
~~m. Ice pipes or chillers.~~

(b) The following, along with all other relevant evidence, may be considered in determining whether an object is drug paraphernalia:

(1) Statements by the owner or anyone in control of the object concerning its use;
(2) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;
(3) The proximity of the object to a violation of the Controlled Substances Act;
(4) The proximity of the object to a controlled substance;
(5) The existence of any residue of a controlled substance on the object;
(6) The proximity of the object to other drug paraphernalia;
(7) Instructions provided with the object concerning its use;
(8) Descriptive materials accompanying the object explaining or depicting its use;
(9) Advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;
(12) Possible legitimate uses of the object in the community;
(13) Expert testimony concerning its use;
(14) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intend to use the object to facilitate violations of the Controlled Substances Act.

(c) Notwithstanding subsection (b) of this section, the following objects commonly used for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, are, in all circumstances, "drug paraphernalia":

(1) Metal, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
(2) Wooden pipes with hashish heads or punctured metal bowls;
(3) Water pipes;
(4) Carburetion tubes and devices;
(5) Smoking and carburetion masks which have been converted to allow smoke to be inhaled;
(6) Objects, commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
(7) Miniature cocaine spoons and cocaine vials;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 888

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

S888-ASA-068 Page 4 of __

(8) Chamber pipes;
(9) Carburetor pipes;
(10) Electric pipes;
(11) Air-driven pipes;
(12) Chillums;
(13) Bongs;
(14) Ice pipes or chillers.'";

and on page 18, line 11 by deleting "Section 4." and inserting "Section 5.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

FISCAL ANALYSIS MEMORANDUM

DATE: June 14, 1999

TO: Senator Roy Cooper

FROM: Jim Mills
Fiscal Research Division

RE: SB 888 – **Proposed House Committee Substitute #002**

FISCAL IMPACT

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

No direct fiscal impact due to this bill for the Department of Correction because DOC can absorb the additional inmates within current prison bed capacity. However there is an indirect cost to add additional inmates to the prison system since otherwise funds could be used for other purposes; see pages 3 and 4 of this note for calculation of that cost.

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
GENERAL FUND					
Correction					
Recurring		No Impact			
Nonrecurring					
Judicial					
Recurring		No estimate available but potential fiscal impact			
Nonrecurring					
Justice *					
a. Lab Analysis by SBI		No Fiscal Impact			
b. Lab Cleanup		No estimate available			
TOTAL EXPENDITURES					

POSITIONS: None

PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: Department of Correction; Judicial Branch, Department of Justice.

EFFECTIVE DATE: December 1, 1999 (Criminal Penalty Changes); Section 2 on restitution is effective when it becomes law.

BILL SUMMARY: Amends G.S. 90-95 (d) (2) to make it a Class I felony to possess any amount of amphetamine/methamphetamine (Schedule II drugs). Amends G.S.90-95(d2) to make it a Class H felony to possess or distribute an immediate precursor chemical and adds six new chemicals to the list of immediate precursor chemicals. Also amends 90-95(h) to repeal (3a), trafficking in amphetamine and then incorporate (3a)

into subsection (3b), trafficking in methamphetamine; increases sentencing classes for (3b) to: Class G Felony to Class F; Class F Felony to Class E Felony; Class D Felony to Class C.

PCS 001 adds section which adds Ketamine to the list of Schedule III controlled substances. Sale of Ketamine would, like other Schedule III substances, be a Class H felony. Intent to manufacture, deliver or sell would be Class I felony. Possession of Ketamine, like other Schedule III substances, would be a Class 1 misdemeanor.

PCS 002 deletes the language that would have diverted restitution for lab analysis work completed by the SBI from the General Fund to a Special Fund in the Department of Justice.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

The following chart shows, for the end of each fiscal year, prison beds estimated to be available, the projected inmate population, the deficit or surplus of available beds compared to population, the number of additional inmates projected to be incarcerated under this bill, and the additional beds needed as a result of this bill after considering projected prison capacity: (In the following chart, rows 4 and 5 are specific to this bill.)

	June 30 2000	**June 30 2001**	**June 30 2002**	**June 30 2003**	**June 30 2004**
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	31,467	31,472	31,936	32,750	33,685
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	34,493	34,717	34,717	34,717	34,717
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+3,026	+3,245	+2,781	1,967	+1,032
4. No. of Projected Additional Inmates Due to this Bill	3	12	12	12	12
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	0	0	0	0	0

As shown in bold in the table above, the Sentencing Commission estimates this specific legislation will add 12 inmates to the prison system by the end of FY 2003-04. There is no direct fiscal impact resulting from the passage of this bill because these additional beds and their associated costs can be absorbed within the Department of Correction's existing budget. However, even though costs can be absorbed due to available bed capacity, there is a daily cost for each inmate added to the system that will have to be expended in lieu of using available funds for other purposes or reverting these funds. The average cost per day for one inmate was the following in 1997-98:

---

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The population projections used for incarceration fiscal notes are based on January, 1999 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds based on Department of Correction estimates of available prison bed Expanded Operating Capacity (EOC) for beds completed or funded and under construction as of 2/19/99. The EOC is the number of beds above 100% capacity (Standard Operating Capacity). The EOC is authorized by previous court consent decrees or departmental policy. These bed capacity figures do not include any State prison beds that are contracted through local jails or any beds that would be lost to the system if any proposals to close small prisons are approved by the General Assembly during the 1999 Session.

DAILY INMATE COST

Custody Level	Minimum	Medium	Close	Statewide Average
Daily Cost Per Inmate (97-98)	$51.27	$67.44	$78.64	$62.41

These costs include security, inmate costs (food medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

Calculation of Prison Bed Projections

1. Class I felony to possess amphetamine/methamphetamine –AOC database contains only one specific breakout for Schedule II drugs, cocaine but SBI records show one to two percent of Schedule II drugs are amphetamine/methamphetamine. Assuming 1.5 percent, there would be 33 convictions with two active convictions of 5.5 months each or one new prison bed in year one. With probation revocations, it is assumed there would be total need of seven prison beds each year for years 2 through 5.

2. Class H felony to possess or distribute an immediate precursor chemical and add six new chemicals --- Currently, there are three convictions per year for seizing clandestine laboratories, according to the SBI. Assuming adding six new chemicals would result in 10 convictions per year and three offenders receiving active sentences, the result would be two prison beds the first year and three beds in subsequent years for probation revocations for at total of five beds for years 2 through 5.

3. Increase penalties for trafficking in amphetamine and methamphetamine – The number of convictions is small so this bill would primarily affect sentence length for these offenders. There would be no impact until at least 2006-07, when it is assumed the number of beds needed would be four and eight in 2007-08 to account for longer sentences.

4. (New PCS001) Ketamine – PCS 001 amends the bill to add Ketamine to the list of Schedule III controlled substances. Sale of Schedule III substances is a Class H felony – there were no offenders in the 1997-98 AOC database whose most serious conviction was for this offense. Manufacture, sell or deliver, or possess with intent to manufacture is a Class I felony for Schedule III - -only one offender was identified in the AOC database for this Schedule III offense. Possession of Schedule III substance is a Class 1 misdemeanor – 19 offenders were identified in the AOC database, still a relatively insignificant number.

In addition, the SBI lab notes they have had only six cases in the last 6 months where Ketamine was identified in lab analyses, although since Ketamine is not currently a controlled substance, there is no overt effort to identify this substance.

Therefore, given the small number of Schedule III convictions, the small number of Ketamine cases, and the available prison capacity it is anticipated that adding Ketamine as a drug violation will have no fiscal impact on the prison system.

NOTE: This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly. Other criminal penalty bill enhancements being considered by the General Assembly reduce the availability of prison beds in future years. The Fiscal Research Division is monitoring the cumulative effect of all criminal penalty bills on the prison system.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2004. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	2004-5	2005-6	2006-7	2007-8
Inmates Due to This Bill	12	12	16	24
Available Beds	117	-757	-1,708	-2,557
New Beds Needed	0	12	16	24

Judicial Department

The Judicial Department indicates that it is likely this bill will have a fiscal impact. In each criminal penalty change outlined in the bill summary, the criminal penalty is increased over the current penalty. In the past, these increases have led to more trials and in turn, increased costs for court personnel and indigent defense. However, the Administrative Office of the Courts (AOC) is unable to accurately determine the number of amphetamines/methamphetamine related charges except for criminal trafficking.

In these cases, 81 defendants were charged in 1998. However, AOC does not have the data to determine how many of these defendants would be charged with the higher level felonies based on the quantities of drugs specified in the bill.

While not likely to be significant, there will be fiscal impact on the court system due to this bill.

For adding Ketamine to the list of Schedule III Controlled Substances, (PCS 001), given the small number of Schedule III cases generally and assuming a small number of Ketamine cases, there is likely to be little or no impact on the Judicial Department.

Department of Justice

Section 2 adds a new subsection (c) to G.S. 90-95.3. This new subsection mandates the court to order restitution for the cost of cleaning up clandestine laboratories. The new language states that restitution will be paid to law enforcement agencies. In most cases, this will be the SBI Crime Lab. There is no information available on the cost of cleaning up clandestine laboratories so there is no estimate available of the fiscal impact. However, the Department of Justice indicates that one incident could cost as much as $30,000 to $40,000. To date, there have only been several cleanup incidents a year, usually as the result of an explosion.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice; and, Office of State Budget and Management.

TECHNICAL CONSIDERATIONS:

CAL RESEARCH DIVISION 733-4910

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 34*
Judiciary I Committee Substitute Adopted 4/22/99

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND 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) In addition to the applicable limits on liability under G.S. 166A-15, any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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) In addition to the applicable limits on liability under G.S. 166A-15, an adult care home licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 34*
Judiciary I Committee Substitute Adopted 4/22/99
Proposed House Committee Substitute S34-PCSSA-001

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND 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) In addition to the applicable limits on liability under G.S. 166A-15, any health care facility or home care agency licensed under this Article that provides temporary shelter or temporary services to elderly or medically dependent individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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.

(4) For which the facility or home care agency does not receive compensation greater than actual costs.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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) In addition to the applicable limits on liability under G.S. 166A-15, an adult care home licensed under this Article that provides temporary shelter or temporary services to elderly or medically dependent individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 in accordance with this subsection.

(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.

(4) For which the adult care home does not receive compensation greater than actual costs.

(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) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes 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. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services under this section shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(e) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

HOUSE JUDICIARY I COMMITTEE

June 29, 1999

Agenda

Senate Bill 34	**Emergency Shelter/Health Facility Immunity** **Senator Cochrane**
Senate Bill 120	**Up Some Underage Sales Penalties** **Senator Allran**
Senate Bill 746	**Structured Settlement Protection Act** **Senator Cooper**
Senate Bill 835	**Revise Law Governing Mergers** **Senator Clodfelter**
Senate Bill 929	**Abatement of Nuisances** **Senator Reeves**

HOUSE JUDICIARY I COMMITTEE
June 29, 1999
Minutes

The House Judiciary I Committee met on Tuesday, June 29, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Clary, Gardner, Insko, Miller, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

The Chairman introduced Ms. Fannie Williams, Senior Fellow, Duke University Leadership In Aging Society Program, who was visiting the committee meeting with Representative Thompson.

Senator Allran was recognized to explain **Senate Bill 120, AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING**, (Attachment II). A proposed House committee substitute, (Attachment III), was distributed. The committee substitute removed the provisions from the original bill that are contained in the current DWI bill.

Representative Thompson moved that the committee substitute be adopted for the purpose of discussion. The motion carried.

Senator Allran stated that the bill sets minimum Class 1 misdemeanor punishments for persons who sell or give alcoholic beverages to a person under 21, or who purchases and aids a person under the age of 21 in the purchase or possession of alcoholic beverages.

A bill analysis prepared by O. Walker Reagan, Staff Attorney, and Ms. Susan L. Hayes, Committee Counsel is attached, (Attachment IV). The analysis outlines the penalties.

A handout was distributed to the members of the committee, (Attachment V).

Representative Thompson asked if the Retail Merchants Association supported the bill. Senator Allran replied that they did.

Mr. Julius Thorpe was recognized and spoke in support of the bill. He related a personal experience in which his underage son was killed in an alcohol-related accident after being given alcohol.

Representative Clary moved that the House committee substitute be given a favorable report and that the Senate committee substitute be given an unfavorable report. The motion carried, (Attachment VI).

Senator Clodfelter was recognized to explain **Senate Bill 835, AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS**, (Attachment VII). A proposed House committee substitute, (Attachment VIII), was distributed.

Representative Nesbitt moved adoption of the committee substitute for the purpose of discussion. The motion carried.

For explanation of the bill, see the bill analysis prepared by Mr. O. Walker Reagan, Staff Attorney, (Attachment IX).

Mr. Mark Davidson, Brooks Pearce Law Firm, was recognized and spoke in support of the bill.

Representative Nesbitt moved a favorable report for the House committee substitute, unfavorable to Senate committee substitute, with a recommendation that the bill be re-referred to the Committee on Finance. The motion carried, (Attachment X).

Senator Cochrane was recognized to continue the discussion of **Senate bill 34, AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES**. The bill was discussed during the June 6, and June 22, 1999 meetings of the committee and a proposed committee substitute was adopted.

A second committee substitute, (Attachment XI), was distributed.

Representative Nesbitt moved adoption of the proposed committee substitute. The motion carried.

Senator Cochrane stated that the committee substitute contained the waiver section of the original bill, which does authorize that the bureaucracy will waive rules that could cause facilities to be unable to take people in without the evaluation and assessment that is typical.

Chairman Hackney questioned how the medical expenses of people who are injured by the negligence of someone would be taken care of.

Ms. Karen Gottovi, Director, Division of Aging, Department of Health and Human Services, was recognized and spoke in support of the legislation

Representative Miller noted the need for a change in the title of the bill.

Representative Clary moved for a favorable report for the House committee substitute, which changes title, unfavorable as to Senate committee substitute bill. The motion carried, (Attachment XII). A copy of the House committee substitute is attached, (Attachment XIII).

The meeting was adjourned at 10:55.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 29, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tonia R James	Brooks, Pierce
[illegible]	DHHS
[illegible]	DHHS
[illegible]	DHHS
Charlene Dairkins	SOS
Sheila Pope	SOS
Judy Smith	DHHS
Karen Gottovi	DHHS
Ben Brown	NHC Special Needs Task Force
Alice Garland	Electric Cities
Pat Epps	SOS
Lou Wilson	NCARTC7
Roger Bone	Bone Assoc
Julius C. Storch III	Alcohol Free Kids - P.O. Box 87071, Fayetteville, 28304
Joe McMillan	NFDS
Alex Fulton	ABC Comm.
Barnett Blevins	Capital Strategies
Robert PASchal	Young, Moore & Henderson, P.A.
Jim Drennan	Institute of Government
Richard E. Chard	Dow's Institute on alcohol
[illegible]	Rodney E. Chard & Assoc.
George Reed	Christian Life Council Chapt St Police
Phil Telfer	AGO
Richard Westbrook	UTU
Ann Deese	CWA
Mark Jardin	Bd. for Licensing of Geologist
Hugh Tilson	NCHA
Joyce Bone	Bone Assoc.

VISITOR REGISTRATION SHEET

JUDICIARY I

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Worth	Carolinas Health Care System
Adam Searing	NCKAC
Cindy Bash	WCSR
Ken Pike	NC A.C.E.
Rodney Johnson	NC ALE
Will Fay	AHHC
Tara Dunlap	WCSR/NASP
Art Case	NCRMA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 120
Judiciary I Committee Substitute Adopted 4/28/99
Third Edition Engrossed 4/29/99

Short Title: Up Some Underage Sales Penalties. (Public)

Sponsors:

Referred to:

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, studies in North Carolina indicate:

(1) 40% of North Carolina high school students acknowledge consuming alcohol in the previous 30 days.

(2) 12% of the State's 11th graders and 18% of the State's 12th graders acknowledge driving a motor vehicle after drinking in the previous 30 days.

(3) Over 50% of North Carolina high school students who currently drink began drinking by age 13.

(4) 79% of high school students say that obtaining alcohol by having an adult buy it for them is very easy and 60% say that obtaining alcohol from the homes of other teens or adults is also very easy.

(5) 66% of North Carolina teens believe their peers are getting alcohol from someone over 21 who is buying it for them, and 80% of the time it is an acquaintance rather than a stranger that buys it.

(6) 30% of North Carolina teens say they know a store in their community where someone under 21 can easily buy beer.

(7) 19% of 17 year-olds report they have attended a party where alcohol was supplied by parents.

(8) In 1996, more than 200 North Carolina youth were hospitalized for primary alcohol-related diagnoses; and

Whereas, young people who begin drinking before age 15 are more than twice as likely to develop alcohol abuse as those who begin drinking at age 21; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-302A. Penalties for certain offenses related to underage persons.**

(a) A violation of G.S. 18B-302(a) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Section 2. G.S. 18B-302(i) is repealed.

Section 3. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S120-CSRU-010
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 120
THIS IS A DRAFT 23-JUN-99 11:13:34
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Up Some Underage Sales Penalties. (Public)

Sponsors:

Referred to:

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, studies in North Carolina indicate:

(1) 40% of North Carolina high school students acknowledge consuming alcohol in the previous 30 days.

(2) 12% of the State's 11th graders and 18% of the State's 12th graders acknowledge driving a motor vehicle after drinking in the previous 30 days.

(3) Over 50% of North Carolina high school students who currently drink began drinking by age 13.

(4) 79% of high school students say that obtaining alcohol by having an adult buy it for them is very easy and 60% say that obtaining alcohol from the homes of other teens or adults is also very easy.

(5) 66% of North Carolina teens believe their peers are getting alcohol from someone over 21 who is buying it for them, and 80% of the time it is an acquaintance rather than a stranger that buys it.

(6) 30% of North Carolina teens say they know a store in their community where someone under 21 can easily buy beer.

(7) 19% of 17 year-olds report they have attended a party where alcohol was supplied by parents.

(8) In 1996, more than 200 North Carolina youth were hospitalized for primary alcohol-related diagnoses; and

Whereas, young people who begin drinking before age 15 are more than twice as likely to develop alcohol abuse as those who begin drinking at age 21; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-302A. Penalties for certain offenses related to underage persons.

(a) A violation of G.S. 18B-302(a) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars ($250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred

dollars ($500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars ($1,000) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

SENATE BILL 120:
Up Some Underage Sales Penalties

BILL ANALYSIS

Committee: House Judiciary I
Date: May 27, 1999
Version: 3rd Edition

Introduced by: Senator Allran
Summary by: O. Walker Reagan, Staff Attorney; Susan L. Hayes, Committee Counsel

SUMMARY: ***Senate Bill 120 would establish minimum Class 1 misdemeanor punishments for persons who sell or give alcoholic beverages to a person under the age of 21 or who purchases and aids and abets a person under the age of 21 in the purchase or possession of alcoholic beverages.***

CURRENT LAW: Current law makes it a Class 1 misdemeanor for a person to sell or give alcoholic beverages to a person under 21 or to purchase and aid and abet a person under 21 in purchasing or possession alcoholic beverages. Under current law no minimum fine or community services required but a judge may impose a fine and community service up to an amount determined in the discretion of the court.

BILL ANALYSIS: Section 1 of the bill creates a new section to provide for specific, minimum mandatory punishment for persons convicted of violated certain specified offenses involving the sell or gift to or possession of alcoholic beverages by persons under age 21.

Subsection (a) establishes that minimum punishment for a violation of the prohibition on selling or giving alcoholic beverages to a person under 21 is as follows:

For a first offense as a condition of probation the person shall be given a minimum fine of $250 and must complete at least 25 hours of community service.

For a second or subsequent violations of this offense, the minimum fine shall be $500 and 150 hours of community service.

Subsection (b) establishes that minimum punishment for a violation by a person 21 or older in purchasing and aiding and abetting a person under 21 in purchasing or possession alcoholic beverages is as follows:

For a first offense as a condition of probation the person shall be given a minimum fine of $500 and must complete at least 25 hours of community service.

For a second or subsequent violations of this offense, the minimum fine shall be $1,000 and 150 hours of community service.

Sections 2 & 3 of the bill repeal G.S. 18B-302(i) which currently makes possession of beer or unfortified wine by a 19 or 20 year old an infraction, and therefore makes those persons subject to the same Class 1 misdemeanor as other underage persons. A technical change is also made to G.S. 15A-146(a).

EFFECTIVE DATE: The bill becomes effective December 1, 1999 and applies to offenses committed on or after that date.

S120-SMSA-001

ATTACHMENT V

Lenoir-Rhyne
COLLEGE

June 23,1999

Senator Austin Allran
Raleigh, North Carolina

Dear Senator Allran,

Thanks for your inquiry regarding binge drinking on campus. I see underage drinking as being one of the most serious public health issues that we have on college campuses. I have attached several pages of a document researched by the Harvard School of Public Health with national data.

We survey our incoming freshman each year regarding all sorts of information. At the same time they give us data regarding alcohol use prior to entering college. Our students are obviously minors at the time. Last year's freshman class told us that 51.1% had consumed beer in the previous year, and 55.8 had consumed wine or liquor. Additionally they told us that 17% of our freshman class spent 11 or more hours per week in the last year "partying".

This spring we also surveyed the entire student body for additional information on alcohol use. 48% reported binge drinking in the previous two weeks. A binge is defined as consuming 5 or more drinks in one setting. 62% indicate that they began drinking prior to age 18, with 16% before the age of 14.

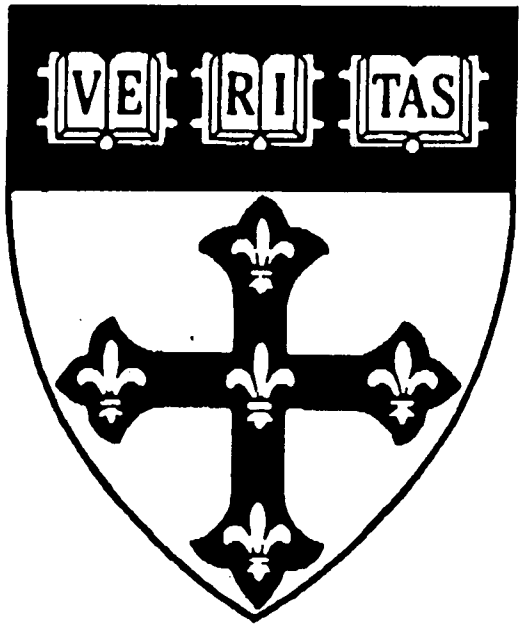
A few months ago I had the unpleasant task of requiring an in-patient alcohol treatment program for one of our students. This student indicated to me that drinking began at home with he/she was 13 years old. I am pleased to report that this student celebrated 90 days of sobriety this past Monday. It is unfortunate that colleges are inheriting problems that began as many as five years prior.

I appreciate your work on this issue. Please let me know if I can be of further assistance.

Sincerely,

Anita Johnson Gwin
Vice President for Student Affairs
and Dean of Students

HARVARD SCHOOL OF PUBLIC HEALTH



BINGE DRINKING ON AMERICAN COLLEGE CAMPUSES:

A NEW LOOK AT AN OLD PROBLEM

With Support from the Robert Wood Johnson Foundation

The Prevalence Of Binge Drinking

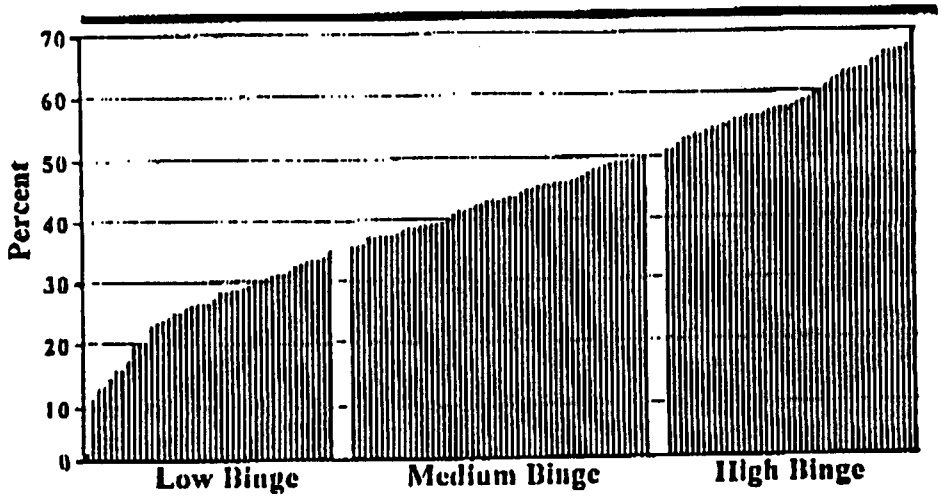
WHAT IS "BINGE DRINKING"

In this study, binge drinking is defined as five or more drinks in a row one or more times during a two week period for men, and four or more drinks in a row one or more times during the same period for women — a gender specific modification to a national standard measure. Our research documents that it takes four drinks for women to run the same risk of various alcohol-related health and behavior problems as men who have had five drinks. These problems include getting into arguments, getting injured, forgetting where they were or what they did, and engaging in unplanned or unprotected sex.

A drink is defined as a 12-ounce can or bottle of beer, a four-ounce glass of wine, a 12-ounce bottle or can of wine cooler, or a shot of liquor taken straight or in a mixed drink. Some may say, "Four or five drinks? That's not much." What this study demonstrates is that, in many students, this benchmark is indicative of a heavy drinking lifestyle. In reality, many students in this study report drinking far more than this, often with the specific intention of getting drunk. But the data show that students

"I was having a great night. I drank at least 15 beers. Then I blacked out. This is not unusual for me. Another time, I became violent, smashed bottles, pushed RAs, and got in tons of trouble."

Distribution of 140 Colleges by Percent of Binging Students



who drink in these or greater amounts differ from other students by the frequency and severity of their alcohol-related problems.

RATES OF BINGING VARY WIDELY FROM SCHOOL TO SCHOOL

Binging rates vary dramatically from campus to campus. At its lowest, the binge drinking rate was 1% of the student population. At its highest, the rate was a staggering 70% of students. At nearly one-third of the schools, more than half of the responding students were binge drinkers. We classify these schools as high-binge colleges.

THE EXTENT OF BINGE DRINKING IS ALARMING

Fully 84% of all students drank during the school year. Nearly half (44%) of all students were binge drinkers, and 19% were frequent binge drinkers (binged three or more times in the past two weeks). But even these averages conceal the extent of binge drinking on high-binge campuses.

% OF STUDENTS AT HIGH-BINGE COLLEGES*

	Male	Female	Total
Frequent bingers	32%	28%	30%
Total bingers	63%	56%	59%
Non-bingers and Non-drinkers	37%	44%	41%

* More than 50% of students binge

% OF STUDENTS AT LOW-BINGE COLLEGES**

	Male	Female	Total
Frequent bingers	11%	7%	9%
Total bingers	31%	22%	26%
Non-bingers and Non-drinkers	69%	78%	75%

** 35% or fewer students binge

"My roommate came home very drunk. I didn't want to deal with it. I had three tests the next day and had planned to study instead of playing 'mom.' I was really scared though. She was throwing things everywhere and crying. She really stunk and was disgusting. I especially didn't want her to puke in my room. I flunked one test and skipped another; I was so drained. I didn't speak to her at all the next day."

Quotes used in this report are drawn from student responses to open-ended questions in our survey

What Bingers Do To Themselves

The numbers in the chart below illustrate the strong, positive relationship between the frequency of binge drinking and a variety of alcohol-related health, social, and academic problems. Nearly half of frequent binge drinkers (47%) experienced five or more different problems as a result of their own drinking since the beginning of the school year. In contrast, 14% of binge drinkers and only 3% of students who drink but do not binge experienced five or more drinking-related problems.

	Non-binge Drinkers	Bingers	Frequent Bingers
Had a hangover	30%	75%	90%
Did something they regretted later	14%	37%	63%
Missed a class	8%	30%	61%
Forgot where they were or what they did	8%	26%	54%
Got behind in school work	6%	21%	46%
Argued with friends	8%	22%	42%
Engaged in unplanned sexual activity	8%	20%	41%
Had unprotected sex	4%	10%	22%
Got hurt or injured	2%	9%	23%
Damaged property	2%	8%	22%
Got into trouble with campus/local police	1%	4%	11%
Required treatment for alcohol overdose	<1%	<1%	1%

"I went to three different frats during pledge week, got drunk, and was almost run over by a car. I didn't realize how close [I came] until the next day. However, overall, I had a great time."

Snapshots

Who Is Binge Drinking On Campus In America?

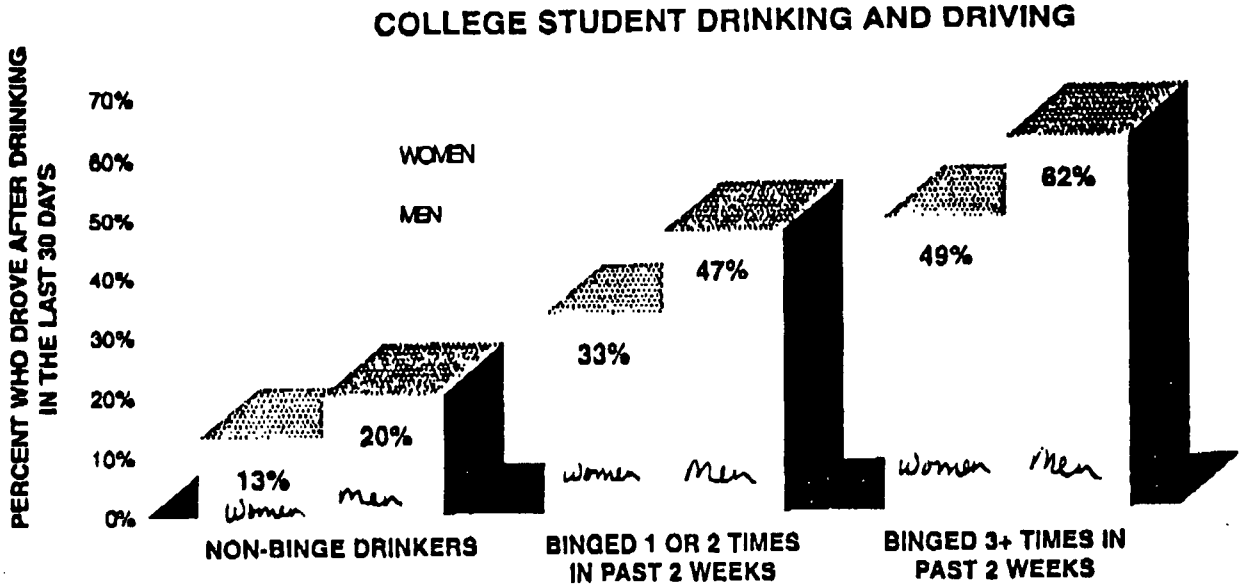
PERCENT WHO BINGE DRINK	
GENDER	
Male	50%
Female	39%
AGE	
Under 21	45%
21-23	48%
24+	28%
COLLEGE RESIDENCE	
Single sex dorm	38%
Coed dorm	52%
Fraternity or sorority	84%
Off-campus housing	40%
RACE	
White	48%
Hispanic	38%
"Other"	34%
Native American/Native Alaskan	34%
Asian/Pacific Islander	21%
Black/African American	16%
RELIGION	
Considers religion to be very important	21%
Does not consider religion to be very important	48%

"My roommate had a drinking contest with her boyfriend. They each had five shots of Wild Turkey, two beers, and then started a "power hour" — one shot of beer per minute for 60 minutes. My roommate began falling down and looked ill. She laid down to go to sleep and began throwing up for two hours straight. She rolled over and almost choked on her vomit."

The highest binge rate was for white males (54%); the lowest was black/African American females (12%). Women attending women's colleges were less likely to binge than women at coeducational institutions (29% vs. 39%, respectively).

Do Students Still Drink And Drive?

"Don't drink and drive" and "Friends don't let friends drive drunk" have yet to become meaningful slogans among college binge drinkers, despite the investment of advertising and public education dollars in these messages. In its 1993 report entitled *Substance Abuse: The Nation's Number One Health Problem*, the Robert Wood Johnson Foundation documented that alcohol abuse contributes to nearly half of motor vehicle fatalities, the leading cause of death among young Americans. Our study confirms that college students remain at high risk: *fifty percent of the frequent binge drinkers in this study reported riding with a driver who was drunk or high, and 40% of the males who binged frequently reported that they had driven a car after having consumed five or more drinks.*

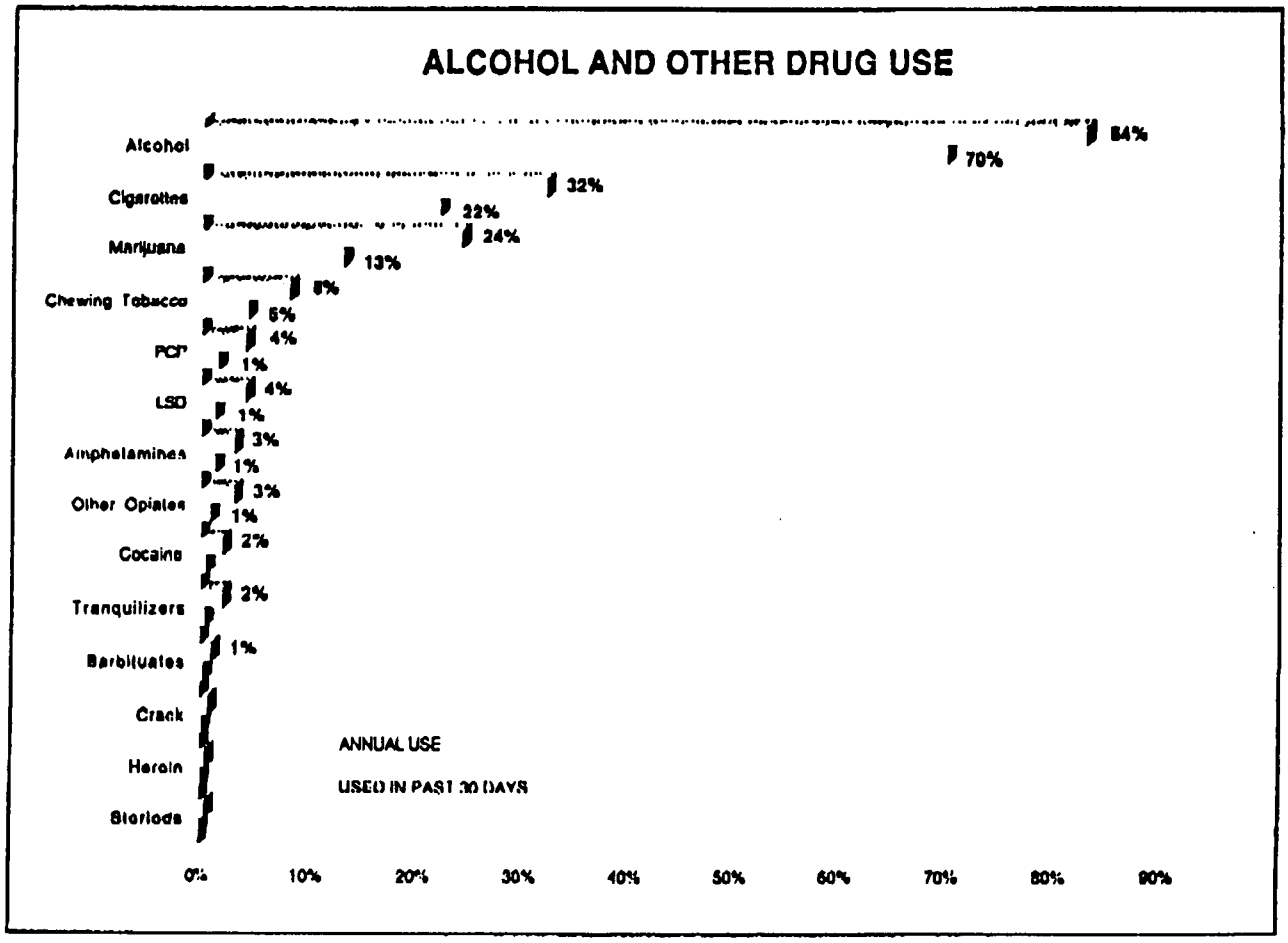


"We were [driving] to a party and we were following another friend because we didn't know the way. The person we were following was driving crazy, driving on top of the line of the highway. We didn't know whether he was changing lanes or just playing around. Then, going around a sharp bend, he turned on two wheels and lost control and crashed into another car. The driver was drunk and four of my friends were hospitalized."

National Trends

Students' Use Of Alcohol Far Out-Distance Illegal Drug And Tobacco Use

Shifts in societal attitudes have played a tremendous role in reducing the use of illegal drugs and tobacco products by college students. Often fueled by new information on the nature and scope of the impact of substance abuse on others, changing attitudes led to more effective intervention strategies. These included smoke-free workplace policies, taxes that price cigarettes beyond the means of most teenagers, and stiffer illegal drug and drunk driving laws. Spreading information about the prevalence of secondhand binge effects could mobilize non-binging students in a groundswell of support to reduce binge drinking on college campuses.



1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 120 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

☐ 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 835
Judiciary I Committee Substitute Adopted 4/26/99

Short Title: Revise Law Governing Mergers. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person duly authorized to do so by the unincorporated entity."

Section 1.2. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 1.3. G.S. 55-1-40 is amended by adding the following new subdivisions, to be placed by the Codifier of Statutes in the appropriate order, to read:

"(24a) 'Surviving entity' means the corporation or unincorporated entity that is the surviving entity of a merger pursuant to G.S. 55-11-10.

(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 1.4. G.S. 55-4-05 reads as rewritten:

"**§ 55-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of that corporation, a certificate reciting ~~such change or transfer~~ the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the corporation or the

name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other ~~corporation,~~ corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

Section 1.6. G.S. 55-9-04(d) reads as rewritten:

"(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;".

Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-11-10. Merger with business entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102 and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55-11-03, unless the shareholder approval is not required under subsection (g) of G.S. 55-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests

are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 1.9. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by the law, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such ~~statutory merger was effected.~~ foreign corporation was incorporated. If the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to transact business in this ~~State and the~~ State, the type of entity and name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign corporation was authorized to transact business in this State may thereafter be

made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART II. NONPROFIT CORPORATIONS.

Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors ~~of a domestic or foreign corporation,~~ by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity shall be executed by a person duly authorized to do so by the unincorporated entity."

Section 2.2. G.S. 55A-1-40 is amended by adding the following new subdivision to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 2.3. G.S. 55A-4-05 reads as rewritten:

"**§ 55A-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to real property in this State is ~~transferred~~ vested by

operation of law upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of the corporation, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for recording in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the amended new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 2.4. G.S. 55A-11-02 reads as rewritten:

"**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with:

(1) A charitable or religious corporation;

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;

(3) A wholly owned foreign or domestic corporation (business or nonprofit) or unincorporated entity which is not a charitable or religious ~~corporation,~~ corporation or charitable or religious organization, provided the charitable or religious corporation or charitable or religious organization is the ~~surviving corporation~~ survivor in the merger and continues to be a charitable or religious corporation or charitable or religious organization after the merger; or

(4) A business or nonprofit corporation (foreign or domestic) or unincorporated entity other than a charitable or religious corporation, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return,

transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become ~~members~~ members, as 'members' is defined in G.S. 55A-1-40 or G.S. 57C-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the ~~surviving corporation.~~ survivor in the merger.

(b) At least 20 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.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than ~~a membership~~ an interest as a member, as defined in G.S. 55A-1-40(16), in the ~~surviving corporation.~~ survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest."

Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and".

Section 2.6. G.S. 55A-11-07 reads as rewritten:

"**§ 55A-11-07. Bequests, devises, and gifts.**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the ~~surviving corporation~~ survivor in the merger unless the will or other instrument otherwise specifically provides."

Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-11-09. Merger with unincorporated entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic nonprofit corporations may merge with one or more unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each merging business entity;

(2) Each merging domestic nonprofit corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection; and

(3) The merger complies with G.S. 55A-11-02, if applicable.

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation or bylaws that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

After a plan of merger has been approved by a domestic nonprofit corporation, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, or, if there is no such provision, as determined by the board of directors.

(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect upon the effectiveness of the articles of merger. Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;
(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving entity without reversion or impairment;
(3) The surviving business entity has all liabilities of each merging business entity;
(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving

business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation and bylaws shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic business corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 2.8. G.S. 55A-15-21 reads as rewritten:

"**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for ~~the merged~~ the foreign corporation by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which ~~such statutory merger was effected.~~ the foreign corporation was incorporated. If the surviving or resulting entity ~~corporation~~ is not authorized to conduct affairs in this State, the ~~articles of merger or~~ certificate shall be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to conduct affairs in this ~~State and~~ State, the type of entity and the name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to conduct affairs in this State;

(2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time ~~each merged~~ the foreign corporation was authorized to conduct affairs in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger~~ or certificate and the application for withdrawal, if required, conforms to law the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART III. LIMITED LIABILITY COMPANIES.

Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of ~~a domestic or foreign~~ the limited liability company;

(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;

(3) If the limited liability company has not been formed, by an organizer; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person duly authorized to do so by the business entity."

Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State."

Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. -- ~~All~~ In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management."

Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

"(a) One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter."

Section 3.5. G.S. 57C-2-34 reads as rewritten:

"**§ 57C-2-34. Real property records.**

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger~~ merger, consolidation, or conversion of ~~two or more~~ the limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The

former name of the limited liability company holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 3.6. G.S. 57C-7-12 reads as rewritten:

"**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or country under which it was organized, or converts into another type of entity permitted by the laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which ~~such statutory merger~~ the foreign limited liability company was ~~effected.~~ organized. If the surviving or resulting entity is not authorized to transact business in this State, the ~~articles of merger or~~ certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign limited liability company authorized to transact business in this ~~State and~~ State, the type of entity and name of the surviving or resulting ~~entity~~ entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each~~ the merged foreign limited liability company was authorized to transact business in this State, may thereafter be made ~~on such foreign limited liability company~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the application for withdrawal, if required, conforms to law, the Secretary of State shall:

(1) Endorse on the ~~articles of merger or~~ certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month, and year of filing thereof;

(2) File the ~~articles of merger or~~ certificate and the application, if required;
(3) Issue a certificate of withdrawal; and
(4) Send to the ~~foreign limited liability company~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed. Chapter 57C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9A.

"Conversion and Merger.

"Part 1. Conversion to Domestic Limited Liability Company.

"§ 57C-9A-01. Conversion.

(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:

(1) The converting business entity complies with the requirements of this Part; and
(2) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws, if the organization and internal affairs of the converting business entity are not governed by the laws of this State.

"§ 57C-9A-02. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;
(2) The terms and conditions of the conversion; and
(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may also contain other provisions relating to the conversion.

(b) In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the

approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or terminated to the extent provided in the plan of conversion.

"§ 57C-9A-03. Filing of articles of organization by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall state:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned before the articles of organization become effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of organization reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the articles of organization as provided in G.S. 57C-1-23.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"§ 57C-9A-04. Effects of conversion.

Upon the conversion becoming effective:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited liability company;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited liability company without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited liability company;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited liability company or into the right to receive cash or other property, are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity, made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Merger.

"§ 57C-9A-05. Merger.

A domestic limited liability company may merge with one or more other domestic limited liability companies or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each of the other merging business entities; and

(2) Each merging domestic limited liability company and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 57C-9A-06. Plan of merger.

(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a

written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no such provision, by the unanimous consent of its members. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited liability company, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"**§ 57C-9A-07. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-06, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger as provided in G.S. 57C-1-23.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-08. Effects of merger.**

Upon the merger becoming effective:

(1) Each other merging business entity merges into the surviving business entity. The separate existence of each merging business entity, except the surviving business entity, ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger, or in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger.

The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of that merging business entity."

PART IV. PARTNERSHIPS.

Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 7. Conversion and Merger.

"§ 59-73.1. Definitions.

As used in this Part:

(1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, but excluding a domestic limited partnership as defined in G.S. 59-102.

(2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, a domestic partnership, or any other partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).

(3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and any other limited liability partnership formed under a law other than the laws of this State but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-102.

"§ 59-73.2. Conversion of domestic partnership.

A domestic partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9 of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership Act.

"§ 59-73.3. Merger.

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

(1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to

the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-73.4. Plan of merger.**

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger; and

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no such provision by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the partners.

"**§ 59-73.5. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.4, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger; and

(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.6. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment subject, in the case of real estate or other property owned by a merging domestic or foreign nonprofit corporation, to any and all conditions to which the property was subject prior to the merger;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for the merging business entity whose existence ceases in the merger;

(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property

are thereupon so converted, and the former holders of the interests in each merging business entity are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation (as defined in G.S. 55-1-40), any rights they may have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

"**§ 59-73.7. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:

(1) The document must contain the information required by this Part. It may contain other information as well.

(2) The document must be typewritten or printed.

(3) The document must be in the English language.

(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person duly authorized to do so by the business entity.

(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 p.m. Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the

advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59 p.m. Eastern Standard Time, on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger or conversion of the partnership, a certificate reciting the merger or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger or conversion shall appear in the 'Grantor' index and the name of the other entity

holding title to the real property by virtue of the merger or conversion shall appear in the 'Grantee' index."

Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

"(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including without limitation, a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including, without limitation, a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a domestic limited partnership, a foreign limited partnership, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State)."

Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

"(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article."

Section 4.4. G.S. 59-204 reads as rewritten:

"**§ 59-204. Execution of ~~certificates.~~ documents.**

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this Article must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person duly authorized to do so by the business entity.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

"(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another

entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies."

Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the ~~amendment~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the ~~amendment~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10A. Conversion and Merger.

"§ 59-1007. Conversions.

(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, the North Carolina Limited Liability Company Act.

(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:

(1) Such converting business entity complies with the requirements of G.S. 59-1008 and G.S. 59-1009; and

(2) If the organization and internal affairs of the converting business entity are not governed by the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.

"§ 59-1008. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
(2) The terms and conditions of the conversion; and
(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36, whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited liability company becomes effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"§ 59-1009. Filing of certificate of limited partnership by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall state:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;
(2) The name of the converting business entity, its type of business, and the state or country whose laws govern its organization and internal affairs; and
(3) That a plan of conversion was approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned before the certificate of limited partnership becomes effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the certificate of limited partnership reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect upon the effectiveness of the certificate of limited partnership as provided in G.S. 59-206.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1010. Effects of conversion.**

(a) Upon the effectiveness of the conversion:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"**§ 59-1011. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. 59-1012 and G.S. 59-1013, and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"**§ 59-1012. Plan of merger.**

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;
(3) The terms and conditions of the merger;
(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
(5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval for a merger with the type(s) of business entities contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by all partners.

"**§ 59-1013. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1012, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;
(2) For each merging business entity, its name, type of business, and the state or country whose laws govern its organization and internal affairs;
(3) The name and address of the surviving business entity;
(4) A statement that the plan of merger was approved by each merging business entity in the manner required by law;
(5) The effective date and time of the merger if it is not to be effective at the time of filing of articles of merger; and
(6) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, the agreement of the surviving business entity that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic

corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger, and a statement irrevocably appointing the Secretary of State as its agent for service of process in any such proceeding and specifying the address to which a copy of the process may be mailed to it by the Secretary of State (subject to any subsequent change in address upon written notification by the surviving business entity by the Secretary of State).

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect upon the effectiveness of the articles of merger.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1014. Effects of merger.**

(a) Upon the effectiveness of the merger:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title of all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose existence ceases in the merger;

(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes, the North Carolina Business Corporation Act; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity."

PART V. CONFORMING CHANGES.

Section 5.1. G.S. 47-18.1 reads as rewritten:

"**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger, consolidation, or conversion.**

(a) If title to real property in this State is ~~transferred~~ vested by operation of law in another entity upon the ~~merger or consolidation of two or more corporations,~~ merger, consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of ~~merger or consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the ~~corporation~~ entity formerly owning the property shall appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 5.2. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a

tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism."

Section 5.3. G.S. 105-129.27(d) reads as rewritten:

"(d) Change in Ownership of Facility. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

"(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a ~~merger~~ merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property."

Section 5.5. G.S. 105-130.17(e) reads as rewritten:

"(e) Any corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a ~~merger~~ merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State."

Section 5.6. G.S. 105-163.010(2) reads as rewritten:

"(2) Business. -- A corporation, partnership, limited liability company, association, or sole proprietorship operated for profit."

Section 5.7. G.S. 105-163.013(f) reads as rewritten:

"(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving ~~corporation~~ company would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company."

Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

"(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

a. The death of the taxpayer.

b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.

c. A merger, conversion, consolidation, or similar transaction requiring approval by the ~~shareholders~~ owners of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, conversion, consolidation, or other similar transaction."

Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

"(2) To a ~~partnership~~ partnership, limited liability company, or corporation as an incident to the formation of the ~~partnership or corporation and~~ partnership, limited liability company, or corporation, no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Internal Revenue ~~Code,~~ Code as defined in G.S. 105-228.90, or to a partnership, limited liability company, or corporation by ~~merger or~~ merger, conversion, or consolidation in accordance with ~~G.S. 55-11-06.~~ applicable law."

Section 5.10. G.S. 105-228.29 reads as rewritten:

"**§ 105-228.29. Conveyances excluded.**

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.

Section 6. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-10-10. Mutual conversion to stock insurer.**

(a) A domestic mutual insurer may convert to a domestic stock insurer under a plan that is approved in advance by the Commissioner.

(b) The Commissioner shall not approve the plan unless:

(1) It is fair and equitable to the insurer's policyholders.

(2) It is adopted by the insurer's board of directors in accordance with the insurer's bylaws and approved by a vote of not less than two-thirds of the insurer's members voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the plan, pursuant to reasonable notice and procedure as approved by the Commissioner. If the company is a life insurer, the right to vote may be limited, as its bylaws provide, to members whose policies are other than term or group policies and have been in effect for more than one year.

(3) Each policyholder's equity in the insurer is determinable under a fair and reasonable formula approved by the Commissioner. The equity shall be based upon the insurer's entire statutory surplus after deducting certificates of contribution, guaranty capital certificates, and similar evidences of indebtedness included in an insurer's statutory surplus.

(4) The policyholders entitled to vote on the plan and participate in the purchase of stock and distribution of assets include all policyholders on the date the plan was adopted by the insurer's board of directors.

(5) The plan provides that each policyholder specified in subdivision (4) of this subsection receives a preemptive right to acquire a proportionate part of all of the proposed capital stock of the insurer or of all of the stock of a corporation affiliated with the insurer within a designated reasonable period as the part is determinable under the plan of conversion; and to apply toward the purchase of the stock the amount of the policyholder's equity in the insurer under subdivision (3) of this subsection. The plan must provide for an equitable distribution of fractional interests.

(6) The plan provides for payment to each policyholder of the policyholder's entire equity in the insurer; with that payment to be applied toward the purchase of stock to which the policyholder is entitled preemptively or to be made in cash, or both. The cash payment may not exceed fifty percent (50%) of each policyholder's equity. The stock purchased, together with the cash payment, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer.

(7) Shares are to be offered to policyholders at a price not greater than that of shares to be subsequently offered to others.

(8) The Commissioner finds that the insurer's management has not, through reduction of volume of new business written, through policy cancellations, or through any other means, sought to (i) reduce, limit, or affect the number or identity of the insurer's members entitled to participate in the plan or (ii) secure for the individuals constituting management any unfair advantage through the plan.

(9) The plan, when completed, provides that the insurer's capital and surplus are not less than the minimum required of a domestic stock insurer transacting the same kinds of insurance, are reasonable in relation to the insurer's outstanding liabilities, and are adequate to meet its financial needs.

(c) With respect to an insurer with a guaranty capital, the conversion plan shall be approved by a vote of not less than two-thirds of the insurer's guaranty capital shareholders and policyholders as provided for in subdivision (b)(2) of this section. The plan may provide for the issuance of stock in exchange for outstanding guaranty capital shares at their redemption value subject to the conditions in subsection (b) of this section.

(d) The Commissioner may schedule a public hearing on the proposed conversion plan.

(e) The Commissioner may retain, at the mutual insurer's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed conversion plan.

(f) The corporate existence of the mutual company continues in the stock company created under this section. All assets, rights, franchises, and interests of the former mutual insurer, in and to real or personal property, are deemed to be transferred to and vested in the stock insurer, without any other deed or transfer; and the stock insurer simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

(g) No director, officer, or employee of the insurer shall receive:

(1) Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the mutual insurer to a domestic stock insurer, other than compensation paid to any director, officer, employee of the insurer in the ordinary course of business; or

(2) Any distribution of the assets, surplus, or capital of the insurer as part of a conversion.

(h) The Commissioner may adopt rules to carry out the provisions of this section."

PART VII. HOMEOWNER ASSOCIATION REFUNDS.

Section 7. G.S. 55A-13-02(b) reads as rewritten:

"(b) Subject to the provisions of subsection (d) of this ~~section, (i) a~~ section:

(1) A corporation may make distributions to any entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor ~~section, and (ii) any~~ section.

(2) Any corporation other than a charitable or religious corporation may make distributions to any domestic or foreign corporation.

(3) Except as otherwise prohibited by statute, a corporation not operated for profit, the membership of which is limited to the owners or occupants of real property in a condominium, cooperative housing corporation or other real property development, having as its primary purposes the management, operation, preservation, maintenance and repair of common areas and improvements upon the real property owned by the members and the corporation or organization, may make distribution to its members of excess or surplus membership dues, fees or assessments remaining after the payment of or provisions for common expenses and any prepayment of reserves; provided that these distributions are in proportion to the dues, fees or assessments collected from the members."

PART VIII. EFFECTIVE DATE.

Section 8. This act becomes effective October 1, 1999, and applies to contracts entered into and mergers, consolidations, or conversions effective on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 835
Judiciary I Committee Substitute Adopted 4/26/99
Proposed House Judiciary I Committee Substitute S835-PCSSA-002

Short Title: Revise Law Governing Mergers. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

(1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 1.2. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 1.3. G.S. 55-1-40 is amended by adding the following new subdivision, to be placed by the Codifier of Statutes in the appropriate order, to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 1.4. G.S. 55-4-05 reads as rewritten:

"**§ 55-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of the corporation, a certificate reciting ~~such change or transfer~~ the name change, merger, consolidation, or conversion shall be

recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other ~~corporation,~~ corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars ($5,000,000)) of any other entity."

Section 1.6. G.S. 55-9-04(d) reads as rewritten:

"(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;".

Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-11-10. Merger with unincorporated entity.

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests,

obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business

entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect when the articles of merger become effective. When a merger takes effect:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to comply with the requirements of

Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by

reason of merger has been filed, at the address for service of process contained in that application.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 1.9. G.S. 55-15-21 reads as rewritten:

"**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign corporation by delivering to the Secretary of State for filing a copy of the articles of ~~merger~~ merger, consolidation, or conversion or a certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such ~~statutory merger was effected.~~ foreign corporation was incorporated. If the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State the articles ~~of merger~~ or certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to transact business in this ~~State and the~~ State, the type of entity and name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign corporation was authorized to transact business in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary of State shall:

(1) Endorse on the articles ~~of merger~~ or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;

(2) File the articles ~~of merger~~ or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART II. NONPROFIT CORPORATIONS.

Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or business corporation shall be executed:

(1) By the presiding officer of the board of directors ~~of a domestic or foreign corporation,~~ by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 2.2. G.S. 55A-1-40 is amended by adding the following new subdivision to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign

limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 2.3. G.S. 55A-4-05 reads as rewritten:

"**§ 55A-4-05. Real property records.**

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger of two or more corporations,~~ merger, consolidation, or conversion of the corporation, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for recording in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 2.4. G.S. 55A-11-02 reads as rewritten:

"**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given writte

notice, a charitable or religious corporation may merge only with:

(1) A charitable or religious corporation;

(2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;

(3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the ~~surviving corporation~~ survivor in the merger and continues to be a charitable or religious corporation after the merger; or

(4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become ~~members~~ members, as 'member' is defined in G.S. 55A-1-40(16) or G.S. 57C-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the ~~surviving corporation.~~ survivor in the merger.

(b) At least 20 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.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the

Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than ~~a membership~~ an interest as a member, as 'member' is defined in G.S. 55A-1-40(16), in the ~~surviving corporation.~~ survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest."

Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and".

Section 2.6. G.S. 55A-11-07 reads as rewritten:

"**§ 55A-11-07. Bequests, devises, and gifts.**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the ~~surviving corporation~~ survivor in the merger unless the will or other instrument otherwise specifically provides."

Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-11-09. Merger with unincorporated entity.**

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic nonprofit corporations may merge with one or more unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal

affairs of each of the other merging business entities;

(2) Each merging domestic nonprofit corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection; and

(3) The merger complies with G.S. 55A-11-02, if applicable.

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect when the articles of merger become effective. When a merger takes effect:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic business corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic business corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders

of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 2.8. G.S. 55A-15-21 reads as rewritten:

"**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal for ~~the merged~~ the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of ~~merger~~ merger, consolidation, or conversion or a certificate reciting the facts of the ~~merger,~~ merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which ~~such statutory merger was effected.~~ the foreign corporation was incorporated. If the surviving or resulting entity ~~corporation~~

is not authorized to conduct affairs in this State, the articles ~~of merger~~ or certificate shall be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign corporation authorized to conduct affairs in this ~~State and~~ State, the type of entity and the name of the surviving ~~corporation~~ or resulting entity, and a statement that the surviving ~~corporation~~ or resulting entity is not authorized to conduct affairs in this State;

(2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time ~~each merged~~ the foreign corporation was authorized to conduct affairs in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law the Secretary of State shall:

(1) Endorse on the articles ~~of merger~~ or certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;

(2) File the articles ~~of merger~~ or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART III. LIMITED LIABILITY COMPANIES.

Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign limited liability company must be executed:

(1) By a manager of ~~a domestic or foreign~~ the limited liability company;
(2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;
(3) If the limited liability company has not been formed, by an organizer; or
(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. -- ~~All~~ In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including without limitation the member's

share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management."

Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

"(a) One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter."

Section 3.5. G.S. 57C-2-34 reads as rewritten:

"**§ 57C-2-34. Real property records.**

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon ~~merger~~ merger, consolidation, or conversion of ~~two or more~~ the limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited liability company holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 3.6. G.S. 57C-7-12 reads as rewritten:

"**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger.~~ merger, consolidation, or conversion.**

(a) Whenever ~~the separate existence of~~ a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for filing a copy of the articles of ~~merger~~ merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which ~~such statutory merger~~ the foreign limited liability company was ~~effected.~~ organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles ~~of merger~~ or certificate must be accompanied by an application which must set forth:

(1) The name of ~~each merged~~ the foreign limited liability company authorized to transact business in this ~~State and~~ State, the type of entity and name of the surviving or resulting ~~entity~~ entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) ~~That~~ A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign limited liability company was authorized to transact business in this State, may thereafter be made ~~on such foreign limited liability company~~ by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law, the Secretary of State shall:

(1) Endorse on the articles ~~of merger~~ or certificate and the application for withdrawal, if required,

the word 'filed' and the hour, day, month, and year of filing thereof;

(2) File the articles ~~of merger~~ or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the ~~foreign limited liability company~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed. Chapter 57C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9A.

"Conversion and Merger.

"Part 1. Conversions.

"**§ 57C-9A-01. Conversion.**

(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:

(1) The converting business entity complies with the requirements of this Part; and

(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws.

"**§ 57C-9A-02. Plan of conversion.**

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;
(2) The terms and conditions of the conversion; and
(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may also contain other provisions relating to the conversion.

(b) In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"**§ 57C-9A-03. Filing of articles of organization by converting business entity.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall state:

(1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;
(2) The name of the converting business entity, its type of business entity, and the state or country

whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned before the articles of organization become effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of organization reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect when the articles of organization become effective.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-04. Effects of conversion.**

When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited liability company;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited liability company without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited liability company;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited liability company or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting

business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Merger.

"§ 57C-9A-05. Merger.

A domestic limited liability company may merge with one or more other domestic limited liability companies or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited liability company and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 57C-9A-06. Plan of merger.

(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no

provision, by the unanimous consent of its members. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited liability company but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"**§ 57C-9A-07. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-06, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 57C-9A-08. Effects of merger.**

(a) When the merger takes effect:

(1) Each other merging business entity merges into the surviving business entity and the separate

existence of each merging business entity, except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of that merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

PART IV. PARTNERSHIPS.

Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 7. Conversion and Merger.

"**§ 59-73.1. Definitions.**

As used in this Part:

(1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that is formed under the laws

of this State, including a registered limited liability partnership as defined in G.S. 59-32, but excluding a domestic limited partnership as defined in G.S. 59-102.

(2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, a domestic partnership, or any other partnership as defined in G.S. 59-36 formed under a law other than the laws of this State (including a limited liability partnership).

(3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and any other limited liability partnership formed under a law other than the laws of this State but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-102.

"§ 59-73.2. Conversion of domestic partnership.

A domestic partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

"§ 59-73.3. Merger.

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

(1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 59-73.4. Plan of merger.

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger; and

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the unanimous consent of the partners.

"**§ 59-73.5. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.4, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-73.6. Effects of merger.**

(a) When a merger takes effect:

(1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests in each merging business entity are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation (as

defined in G.S. 55-1-40), any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by

the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.

"**§ 59-73.7. Filing of documents.**

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:

(1) The document must contain the information required by this Part. It may contain other information as well.

(2) The document must be typewritten or printed.

(3) The document must be in the English language.

(4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership.

(5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.

(6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

(1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
Articles of Merger	$50.00
Articles of Correction	$10.00

The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of STate under this Part. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

(1) Two hundred dollars ($200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and

(2) One hundred dollars ($100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the

Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of

the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the

'Grantor' index and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

"(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including without limitation, a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including, without limitation, a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a domestic limited partnership, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State)."

Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

"(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article."

Section 4.4. G.S. 59-204 reads as rewritten:

"**§ 59-204. Execution of ~~certificates.~~ documents.**

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

"(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies."

Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required.

The former name of the domestic or foreign limited partnership holding title to the real property before the ~~amendment~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the ~~amendment~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-909. Withdrawal of foreign limited partnership by reason of a merger, consolidation, or conversion.**

(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;

(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and

(4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

Section 4.8. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10A. Conversion and Merger.

"**§ 59-1007. Conversions.**

(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.

(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:

(1) Such converting business entity complies with the requirements of G.S. 59-1008 and G.S. 59-1009; and

(2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State the conversion is permitted by laws of the

state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.

"§ 59-1008. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

(1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;

(2) The terms and conditions of the conversion; and

(3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section but before a certificate of limited partnership for the resulting domestic limited liability company becomes effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"§ 59-1009. Filing of certificate of limited partnership by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall state:

(1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(3) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned before the certificate of limited partnership becomes effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the certificate of limited partnership reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect when the certificate of limited partnership becomes effective.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1010. Effects of conversion.**

(a) When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"§ 59-1011. Merger.

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. 59-1012 and G.S. 59-1013, and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 59-1012. Plan of merger.

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger;

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and

(5) If the surviving business entity is a domestic limited partnership, any amendments to its

certificate of limited partnership that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by the unanimous consent of the partners.

"**§ 59-1013. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1012, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) The plan of merger;

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The name and address of the surviving business entity;

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and

(5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for

filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"**§ 59-1014. Effects of merger.**

(a) When the merger takes effect:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the plan of merger;

(6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes; and

(7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are

entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an

application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

PART V. CONFORMING CHANGES.

Section 5.1. G.S. 47-18.1 reads as rewritten:

"**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger, consolidation, or conversion.**

(a) If title to real property in this State is ~~transferred~~ vested by operation of law in another entity upon the ~~merger or consolidation of two or more corporations,~~ merger, consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of ~~merger or consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the ~~corporation~~ entity formerly owning the property shall appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 5.2. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have

taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism."

Section 5.3. G.S. 105-129.27(d) reads as rewritten:

"(d) Change in Ownership of Facility. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

"(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a ~~merger~~ merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property."

Section 5.5. G.S. 105-130.17(e) reads as rewritten:

"(e) Any corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a ~~merger~~ merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State."

Section 5.6. G.S. 105-163.010(2) reads as rewritten:

"(2) Business. -- A corporation, partnership, limited liability company, association, or sole proprietorship operated for profit."

Section 5.7. G.S. 105-163.013(f) reads as rewritten:

"(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving ~~corporation~~ company would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation or organization of the surviving company."

Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

"(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

a. The death of the taxpayer.

b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.

c. A merger, conversion, consolidation, or similar transaction requiring approval by the ~~shareholders~~ owners of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible

property in the merger, conversion, consolidation, or other similar transaction."

Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

"(2) To a ~~partnership~~ partnership, limited liability company, or corporation as an incident to the formation of the ~~partnership or corporation and~~ partnership, limited liability company, or corporation, and no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Internal Revenue ~~Code,~~ Code as defined in G.S. 105-228.90, or to a partnership, limited liability company, or corporation by ~~merger or~~ merger, conversion, or consolidation in accordance with ~~G.S. 55-11-06.~~ applicable law."

Section 5.10. G.S. 105-228.29 reads as rewritten:

"**§ 105-228.29. Conveyances excluded.**

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.

Section 6. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-10-10. Mutual conversion to stock insurer.**

(a) A domestic mutual insurer may convert to a domestic stock insurer under a plan that is approved in advance by the Commissioner.

(b) The Commissioner shall not approve the plan unless:

(1) It is fair and equitable to the insurer's policyholders.

(2) It is adopted by the insurer's board of directors in accordance with the insurer's bylaws and approved by a vote of not less than two-thirds of the insurer's members voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the plan, pursuant to reasonable notice and procedure as approved by the Commissioner. If the company is a life insurer, the right to vote may be limited, as its bylaws provide, to members whose policies are other than

term or group policies and have been in effect for more than one year.

(3) Each policyholder's equity in the insurer is determinable under a fair and reasonable formula approved by the Commissioner. The equity shall be based upon the insurer's entire statutory surplus after deducting certificates of contribution, guaranty capital certificates, and similar evidences of indebtedness included in an insurer's statutory surplus.

(4) The policyholders entitled to vote on the plan and participate in the purchase of stock and distribution of assets include all policyholders on the date the plan was adopted by the insurer's board of directors.

(5) The plan provides that each policyholder specified in subdivision (4) of this subsection receives a preemptive right to acquire a proportionate part of all of the proposed capital stock of the insurer or of all of the stock of a corporation affiliated with the insurer within a designated reasonable period as the part is determinable under the plan of conversion; and to apply toward the purchase of the stock the amount of the policyholder's equity in the insurer under subdivision (3) of this subsection. The plan must provide for an equitable distribution of fractional interests.

(6) The plan provides for payment to each policyholder of the policyholder's entire equity in the insurer; with that payment to be applied toward the purchase of stock to which the policyholder is entitled preemptively or to be made in cash, or both. The cash payment may not exceed fifty percent (50%) of each policyholder's equity. The stock purchased, together with the cash payment, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer.

(7) Shares are to be offered to policyholders at a price not greater than that of shares to be subsequently offered to others.

(8) The Commissioner finds that the insurer's management has not, through reduction of volume of new business written, through policy cancellations,

or through any other means, sought to (i) reduce, limit, or affect the number or identity of the insurer's members entitled to participate in the plan or (ii) secure for the individuals constituting management any unfair advantage through the plan.

(9) The plan, when completed, provides that the insurer's capital and surplus are not less than the minimum required of a domestic stock insurer transacting the same kinds of insurance, are reasonable in relation to the insurer's outstanding liabilities, and are adequate to meet its financial needs.

(c) With respect to an insurer with a guaranty capital, the conversion plan shall be approved by a vote of not less than two-thirds of the insurer's guaranty capital shareholders and policyholders as provided for in subdivision (b)(2) of this section. The plan may provide for the issuance of stock in exchange for outstanding guaranty capital shares at their redemption value subject to the conditions in subsection (b) of this section.

(d) The Commissioner may schedule a public hearing on the proposed conversion plan.

(e) The Commissioner may retain, at the mutual insurer's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed conversion plan.

(f) The corporate existence of the mutual company continues in the stock company created under this section. All assets, rights, franchises, and interests of the former mutual insurer, in and to real or personal property, are deemed to be transferred to and vested in the stock insurer, without any other deed or transfer; and the stock insurer simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

(g) No director, officer, or employee of the insurer shall receive:

(1) Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the mutual insurer to a domestic stock insurer, other than compensation paid to any director, officer, employee of the insurer in the ordinary course of business; or

(2) Any distribution of the assets, surplus, or capital of the insurer as part of a conversion.

(h) The Commissioner may adopt rules to carry out the provisions of this section."

PART VII. HOMEOWNER ASSOCIATION REFUNDS.

Section 7. G.S. 55A-13-02(b) reads as rewritten:

"(b) Subject to the provisions of subsection (d) of this ~~section, (i) a~~ section:

(1) A corporation may make distributions to any entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor ~~section, and (ii) any~~ section.

(2) Any corporation other than a charitable or religious corporation may make distributions to any domestic or foreign corporation.

(3) Except as otherwise prohibited by statute, a corporation not operated for profit, the membership of which is limited to the owners or occupants of real property in a condominium, cooperative housing corporation or other real property development, having as its primary purposes the management, operation, preservation, maintenance and repair of common areas and improvements upon the real property owned by the members and the corporation or organization, may make distribution to its members of excess or surplus membership dues, fees or assessments remaining after the payment of or provisions for common expenses and any prepayment of reserves; provided that these distributions are in proportion to the dues, fees or assessments collected from the members."

PART VIII. RETENTION OF FEES.

Section 8. All fees received by the Department of the Secretary of State pursuant to the provisions of and for the administration of this act shall be retained by the Department of the Secretary of State for fiscal years 1999-2000, 2000-2001, and

2001-2002. No such fees received shall revert to the general Fund during those fiscal years. Fees retained pursuant to this section shall be used by the department of the Secretary of State for administration of 55, 55A, 55B, 57C and 59 of the General Statutes.

Any fees received on or after July 1, 2002 but not used by the Department in the administration of those Chapters by the close of the fiscal year in which such fees are received shall revert to the General Fund. Monies retained pursuant to this section shall be subject to audit pursuant to the Executive Budget Act.

PART IX. EFFECTIVE DATE.

Section 9. This act becomes effective January 1, 2000, and applies to mergers, consolidations, or conversions effective on or after that date.

SENATE BILL 835:
Revise Law Governing Mergers.

BILL ANALYSIS

Committee: House Judiciary I
Date: May 13, 1999
Version: 2nd Edition

Introduced by: Senator Clodfelter
Summary by: O. Walker Reagan, Staff Attorney

SUMMARY: ***Senate Bill 835 would clarify and conform laws governing the mergers, consolidations and conversions among business corporations, nonprofit corporations, partnerships, limited partnerships, limited liability companies and foreign entities. It would also provide for a method for conversion of mutual insurance companies to stock insurance companies, and would permit homeowner associations to refund excess dues and fees collected from association members.***

CURRENT LAW: Current law provides procedures for some mergers, consolidations and conversions of business corporations, nonprofit corporations, and limited liability companies. There are no conversion/merger provisions for partnerships or limited partnerships.

BILL ANALYSIS: Parts I through V of Senate Bill 835 provide for a common, standardized form of mergers, consolidations and conversions for business corporations, nonprofit corporations, limited liability companies, partnerships and limited partnerships, permitting different forms of entities to merge and convert into other entity forms.

The standard provisions require a plan of merger or conversion adopted by the merging or converting entities, articles of merger or conversion filed with the Secretary of State, and defines the legal effects of the merger/conversion on title to real property, liabilities, pending actions, and the rights to succeed in interest. Provisions are also made for merger/conversions with foreign corporations, foreign nonprofits, foreign partnerships, foreign limited liability companies and other foreign entities.

Part VI sets out the procedure for the conversion of a mutual insurance company to a stock insurance company. This type of conversion must be approved by the Commissioner of Insurance and must provided that the policyholder in a mutual insurance company will own the same proportionate share of a stock insurance company as the policyholder owned in the mutual insurance company. This Part also insures that the officers, directors and employees of a mutual insurance company will not receive any separate compensation as a result of a conversion other than the compensation paid in the ordinary course of business.

Part VII amends the Nonprofit Corporation statute to permit homeowners associations that accumulate excess funds from its members, to distribute those excess funds to the members of the association in proportion to the fees collected from the members.

EFFECTIVE DATE: The bill becomes effective October 1, 1999 and applies to contracts entered into and mergers, consolidations and conversions effective on or after the effective date.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 835 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ 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 34*
Judiciary I Committee Substitute Adopted 4/22/99
Proposed House Committee Substitute S34-PCSSA-002

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND 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. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster

or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify in advance of a declared disaster or emergency rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 34 A BILL TO BE ENTITLED AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

☐ 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 34*
Judiciary I Committee Substitute Adopted 4/22/99
Proposed House Committee Substitute S34-PCSA159-SA

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

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES 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. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.**

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the

facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

"**§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.**

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

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

HOUSE JUDICIARY I COMMITTEE

July 1, 1999

Agenda

Senate Bill 746 – Structured Settlement Protection Act
Senator Cooper

Senate Bill 995 - Police Peer Counselor Privilege
Senator Odom

HOUSE JUDICIARY I COMMITTEE
July 1, 1999
Minutes

The House Judiciary I Committee met on Thursday, July 1, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Ellis, Gardner, Gray, Insko, Nesbitt, Redwine and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated **Senate Bill 746, AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT** would be the first bill for discussion. He reminded the committee that a proposed committee substitute had been adopted for the purpose of discussion on May 20, 1999, and that a Nesbitt amendment was adopted on June 17, 1999. He noted that much discussion had taken place regarding the bill and that presently there were two competing versions of the bill. He said that it was his hope to reconcile the versions and get the bill out, if that is the will of the committee to do so.

Ms. Susan L. Hayes, Committee Counsel, was recognized to identify the two versions, and note the differences in them. Ms. Hayes stated that the version identified by the drafting code "004" was the Nesbitt version, (Attachment II) and the "005" was the Hackney version, (Attachment III). She then identified the following differences in the versions: The Nesbitt version had a legislative intent statute stating that the process should be fast and fair, and is not intended to tie the process up and make it impossible to do. A second difference is found in the Hackney version in the definition of "applicable law." This version would incorporate more of the conflicts of loss procedures if the structured settlement or contract had been signed in another state, and another states' law may or may not apply to some aspects of whether or not a settlement is transferred. The Nesbitt version contains a statute that would basically void any provision of structured settlement contract that attempts to prohibit its transfer. The Hackney version does not have this provision. The Hackney version contains language that says, "will not contravene other applicable law" and pertains to whether or not other applicable law is applied. The Nesbitt version does not contain this language. Both versions contain language to limit the amount of fees that a transferee may charge to the payee to 2%. The Hackney version includes filing and legal fees; the Nesbitt version does not. The Hackney version contains new language regarding transfer of periodic payment saying: "Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied." The two versions differ in wording on page 7, line 28 (004) and page 7, line 30-31 (005). The 004 version states: "Any payee who has transferred structured settlement payment rights to a transferee without '**complying**' with this Article may bring an action against the transferee.... And the 005 version uses the word '**knowledge**'."

Chairman Hackney stated that he preferred the Nesbitt language of **complying**. Ms. Hayes noted that she would make that technical correction.

The committee heard from Mr. Dave Horne, Smith-Anderson Law Firm, and Mr. Sandy Sands, Association of Settlement Purchasers regarding the differences in the two versions.

Representative Nesbitt stated that he was not satisfied with either version, but that he was attempting to make the process simple.

Committee discussion followed.

The committee heard from Mr. Michael Schaul. A broker of structured settlements.

To summarize the changes under suggestion, Chairman Hackney stated that legislative intent would be removed from the Nesbitt version as well as the applicable law section of the Hackney version. The words "or insurance" would be added to the definition of annuity issuer, to read: "Annuity issuer means an insurer that has issued an annuity **or insurance** contract used to fund periodic payments under a structured settlement." The restriction on transfer invalid language in the Nesbitt would be removed. The words "and will not contravene other applicable law" would be removed from page 4, line 10 of the Hackney version.

The question before the committee was adoption of the suggested changes that reconciled the differences in the versions of the bill. The committee voted to accept the suggested changes. Representative Gray voted in opposition.

The remaining change under discussion was the language regarding legal fees and filing fees.

Committee discussion followed.

Representative Ellis moved to leave the filing fees and legal fees in the bill. By a vote of 7-2, the motion carried.

Representative Ellis moved to limit the provisions to minors and incompetents. The motion failed. The motion failed.

Representative Gray moved to give a favorable report for a House committee substitute incorporating the provisions as agreed by the committee during this meeting, and an unfavorable report as to the Senate committee substitute bill. The motion carried, (Attachment IV). A copy of the committee substitute is attached, (Attachment V).

The meeting was adjourned.

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 1, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
JOHN F. MCARTHUR	GENERAL ELECTRIC
Phil Telfer	AGO
Mark Osborne	AOC
[illegible]	WCSR
[illegible]	WCSR
Mike Schaul	KG Funding
Boyd Cauble	City of Charlotte
[illegible]	NCATA
[illegible]	TBSF
[illegible]	Jordan Price
[illegible]	Young, Moore & Henderson, P.A.
[illegible]	Capitol Strategies
[illegible]	Moore & Van Allen
Barrett Brewer	Capital Strategies
[illegible]	Committee on State Taxation
[illegible]	Rep. Dedrick Hoyle
Mary Carmichael	Mecklenburg County

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBSTITUTE
S746-PCSSA-004 Nesbitt
Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Legislative intent.

It is the intent of this legislation to provide a clear, fair, and expeditious processing of all requested transfers notwithstanding the existence of any contractual or other limitations or prohibitions on assignment, alienation or encumbrances of the structured settlement payment rights.

"§ 1-543.12. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an annuity contract used to fund periodic payments under a structured settlement;

(2) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(3) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(4) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(5) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(6) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(7) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(8) 'Settled claim' means the original tort claim resolved by a structured settlement;
(9) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;
(10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;
(11) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;
(12) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:
a. The payee is domiciled in this State;
b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;
(13) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;
(14) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and
(15) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.13. Restriction on transfer invalid.

Any provision in a structured settlement agreement that prohibits the payee of structured settlement payment rights from transferring the right to receive payment to another party is against public policy and is void and unenforceable.

"**§ 1-543.14. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;

h. The discount rate used by the transferee to determine the net amount payable to the payee

for the structured settlement payments to be transferred; and

i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee.

(3) The transfer is in the best interest of the payee.

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

(6) The discount rate used in determining discounted present value of the structured settlement payment rights does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subsection, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceeding month;

(7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee, do not

exceed two percent (2%) of the net amount payable to the payee; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred.

"**§ 1-543.15. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.16. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative

authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.12(4), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.14(a)(2);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.17. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without complying with this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred in violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99

PROPOSED HOUSE COMMITTEE SUBSTITUTE
S746-PCSSA-005 (Hackney)
Attention: Line Numbers May Change After Adoption

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Definitions.

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) 'Applicable law' means:

a. The federal laws of the United States; and

b. The laws of this State, including principles of equity and conflicts of laws applied in the courts of this State.

(3) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(4) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(5) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(6) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(7) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(8) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(9) 'Settled claim' means the original tort claim resolved by a structured settlement;

(10) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;

(11) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(12) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(13) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(14) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(15) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(16) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.12. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;

h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and

i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event

of any breach of the transfer agreement by the payee.

(3) The transfer is in the best interest of the payee.

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

(6) The discount rate used in determining the net amount payable to the payee, as provided in subsection (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subsection, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceeding month;

(7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee, do not exceed two percent (2%) of the net amount payable to the payee; and

(8) The transfer of structured settlement payment rights is fair and reasonable.

(9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured

settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.11(5), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without knowledge of the requirements set out in this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred as a result of a violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 746 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION 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

S D

SENATE BILL 746
Judiciary I Committee Substitute Adopted 4/21/99
Proposed House Committee Substitute S746-PCS3851-SA

Short Title: Structured Settlement Protection Act. (Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

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

"ARTICLE 44B.

"Structured Settlement Protection Act.

"**§ 1-543.10. Title.**

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"**§ 1-543.11. Definitions.**

For purposes of this Article:

(1) 'Annuity issuer' means an insurer that has issued an annuity or insurance contract used to fund periodic payments under a structured settlement;

(2) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(3) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:
  a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;
  b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and
  c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(4) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(5) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(6) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;

(7) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(8) 'Settled claim' means the original tort claim resolved by a structured settlement;

(9) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;

(10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(11) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(12) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee is domiciled in this State;
b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(13) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;

(14) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and

(15) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"**§ 1-543.12. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;
b. The aggregate amount of such payments;
c. The discounted present value of such payments;
d. The gross amount payable to the payee in exchange for such payments;
e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;

h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and

i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transfer is in the best interest of the payee;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

(6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;

(7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;

(8) The transfer of structured settlement payment rights is fair and reasonable; and

(9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a

transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred.

"**§ 1-543.13. Jurisdiction.**

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"**§ 1-543.14. Procedure for approval of transfers.**

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.11(4), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"**§ 1-543.15. No waiver; penalties.**

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without complying with this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred in violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"**§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

HOUSE JUDICIARY I COMMITTEE

July 6, 1999

Agenda

Senate Bill 393 – Written Motions/Supporting Briefs
Senator Miller

Senate Bill 888 – Drug Law Amendments
Senator Cooper

Senate Bill 929 – Abatement of Nuisances
Senator Reeves

Senate Bill 995 – Police Peer Counselor Privilege
Senator Odom

HOUSE JUDICIARY I COMMITTEE
July 6, 1999
Minutes

The House Judiciary I Committee met on Tuesday, July 6, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Blue, Clary, Gardner, Insko, Miller, Moore and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney stated that **Senate Bill 888, AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES,** would be the first bill on the agenda, (Attachment II). He reminded the committee that the bill had been sent to a subcommittee to address amendments proposed by Representative Moore regarding drug paraphernalia. He said that some constitutional questions arose that need to be fully addressed. He stated that there would be a recommendation that the bill be placed in a study, and that Representative Moore would not go forward with his amendment.

Representative Moore moved a favorable report for the House committee substitute that was adopted by the committee at its June 22, 1999 meeting, and an unfavorable report for the Senate committee substitute. The motion carried, (Attachment III). A copy of the committee substitute is attached, (Attachment IV).

Senator Reeves was recognized to explain **Senate Bill 929, AN ACT TO REVISE THE ABATEMENT OF NUISANCES STATUTES**, (Attachment V). Senator Reeves stated that the bill was requested by the Crime Commission. He said that the abatement nuisance team began working in earnest in November of 1994, that it has five sworn officers and acts only at the invitation of local government. The team has investigated 237 referrals and has40 investigations pending. They have terminated nuisances at 81 sites across the state.

The provisions of the bill are outlined in a bill analysis prepared by Ms. Susan L. Hayes, Committee Counsel, (Attachment VI).

Committee discussion followed, and Mr. Jon Williams, Crime Control and Public Safety, responded to questions.

Representative Moore offered an amendment, (Attachment VII), and moved its adoption. The amendment would give law enforcement groups the means by which to enter property in order to make inventory. The amendment was adopted.

Representative Clary moved for a favorable report for a House committee substitute incorporating the amendment, and an unfavorable report as to Senate committee substitute.

Representative Blue offered an amendment, (Attachment VIII), and moved its adoption. The amendment would remove the language "the provisions of this Chapter to abate a nuisance shall not be applied against the State or any of its political subdivisions."

Mr. Rodney Johnson, Nuisance Abatement Team, commented on the amendment.

The question before the committee was the adoption of the amendment. Following a vote of the committee, the amendment was adopted.

The motion made by Representative Clary was before the committee. The motion carried, (Attachment IX).

Senator Odom was recognized to explains **Senate Bill 995, AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS**, (Attachment X). A proposed House committee substitute was distributed, (Attachment XI), and Representative Insko moved that it be adopted for the purpose of discussion. The motion carried.

Senator Odom stated that the bill gives an evidentiary privilege for peer counselors, who are defined in the bill. The bill is further explained in a bill analysis prepared by Ms. Hayes, (Attachment XII). Senator Odom stated that the bill had the support of the Sheriff's Association.

Committee discussion followed.

Mr. Eddie Caldwell, Law Enforcement Officers Association, was recognized and responded to questions.

Representative Thompson moved a favorable report for the House committee substitute, and unfavorable as to Senate committee substitute. The motion carried, (Attachment XIII), by a vote of 4-2, and Representative Miller did not vote.

The meeting was adjourned at 10:55 a.m.

Joe Hackney

Representative Joe Hackney, Chairman

Emily Reynolds

Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 6, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anna Lithin	Charlotte Observer
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off. Assn.
Jon Williams	CCPS
RE Johnson	NC ALE
Ken Pike	NC A.L.E.
Charles Cromer	NCATL
Bill Alexander	NC PBA
Jacob Kline	ACLU-NC
Andy Ellen	NCRMA
Ann Case	NCRMA
John Rustin	NCFPC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCSSA-003

Short Title: Drug Law Amendments. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of

sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~

(1) Anhydrous ammonia.

(1a) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1

misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a

Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be

punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and

a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~

Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be

sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in

Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.

9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.

2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic

steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed 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) **Hackney** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 888 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 888
Proposed House Committee Substitute S888-PCS3852-SA

Short Title: Drug Law Amendments. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

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

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

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

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

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

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

~~(1) Anthranilic acid.~~
(1) Anhydrous ammonia.
(1a) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(10a) Iodine.
(11) Isosafrole.
(11a) Lithium.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(27a) Red phosphorous.
(28) Safrole.
(28a) Sodium.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for

an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be

sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~

~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);~~

~~b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);~~

~~c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).~~

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in ~~methamphetamine'~~ methamphetamine or

amphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~ Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or

any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"**§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses.~~ analyses; restitution for seizure and cleanup of clandestine laboratories.**

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"**§ 90-91. Schedule III controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chlorhexadol.
3. Repealed by Session Laws 1993, c. 319, s. 5.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonethylmethane.
9. Sulfonmethane.

9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one. flupyrazapon.

10. Any compound, mixture or preparation containing

(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt thereof and one or more active ingredients which are not included in any other schedule.

11. Any suppository dosage form containing
(i) Amobarbital.
(ii) Secobarbital.
(iii) Pentobarbital.
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture,

or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 929
State and Local Government Committee Substitute Adopted 4/29/99

Short Title: Abatement of Nuisances. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE ABATEMENT OF NUISANCES STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19-1(a) reads as rewritten:

"(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

Section 2. G.S. 19-1.1 reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19- 1, the following definitions shall apply:

(0.1) 'Breach of the peace' means repeated acts that disturb the public order including, but not limited to, homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(1) 'Knowledge' or 'knowledge of such nuisance' means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of ~~lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic~~

~~drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.~~ lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

(2) 'Lewd matter' is synonymous with 'obscene matter' and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

b. Which depicts patently offensive representations of:

1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) 'Lewdness' is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) 'Matter' means a motion picture film or a publication or both.

(5) 'Motion picture film' shall include any:

a. Film or plate negative;
b. Film or plate positive;
c. Film designed to be projected on a screen for exhibition;
d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
e. Video ~~tape~~ tape, compact disc, digital video disc or any other medium used to electronically reproduce images on a screen.

(6) 'Person' means any individual, partnership, firm, association, corporation, or other legal entity.

(7) 'Place' includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent

or not, or the ground ~~itself, but excluding a private dwelling place not used for a profit.~~ itself.

(7a) 'Preserving the status quo' as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy and not allow the nuisance to continue.

(7b) 'Prostitution' means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.

(8) 'Publication' shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) ~~'Sale'~~ 'Sale of obscene or lewd matter' means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

(10) 'Sale' as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.

(11) 'Used for profit' shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit."

Section 3. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;

(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur."

Section 4. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;

(3) All money or other valuable ~~consideration~~ consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

Section 5. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may

maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against ~~the~~ any public official or public ~~entity for the official action.~~ entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter.

The provisions of this Chapter to abate a public nuisance shall not be applied against the State or any of its political subdivisions."

Section 6. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district,

whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

Section 7. G.S. 19-2.5 reads as rewritten:

"**§ 19-2.5. Hearing on the preliminary injunction; issuance.**

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may, in its discretion, order the closure of the property pending trial on the merits."

Section 8. G.S. 19-3(b) reads as rewritten:

"(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance."

Section 9. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a

nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner."

Section 10. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the ~~illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17),~~ manufacture, possession with intent to sale, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, or two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the ~~plaintiff prior to the action~~ plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have

not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the ~~sale and additional monies, if necessary.~~ sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of

possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

Section 11. This act becomes effective October 1, 1999.

SENATE BILL 929:
Abatement of Nuisances

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Reeves
Date:	June 29, 1999	**Summary by:**	Susan L. Hayes
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 929 makes various changes to the nuisance statutes.***

BILL ANALYSIS: Senate Bill 929 makes various changes to the nuisance statutes.

Section 1 changes the term "narcotic drugs" to "controlled substances". "Narcotic drugs" are primarily opiate drugs. The change would allow the nuisance statutes to apply where any controlled substance is involved.

Section 2 makes several changes to the definitions used in nuisance actions. "Breach of the peace", "Preserving the status quo", "prostitution", "sale", and "used for profit" are defined. The definition of "knowledge" is amended by adding constructive knowledge in certain circumstances. The definition of "motion picture film" is updated to reflect new technology.

Section 3 changes "narcotic drugs" to "controlled substances".

Section 4 adds vehicles to the items subject to forfeiture as a nuisance.

Section 5 allows the Attorney General, district attorney, county or municipality, including the sheriff or chief of police to request that the Alcohol Law Enforcement Division (ALE) investigate and make recommendations regarding actions to abate public nuisances.

Section 6 excludes private dwellings from the inventory procedures used to restrain use of property by ex parte orders unless the private dwelling is used for profit.

Section 7 allows the court to close the property pending trial on the merits.

Section 8 adds "breach of the peace" to the offenses admissible to show presence of a nuisance.

Section 9 allows the plaintiff in the nuisance action to file a notice of lis pendens on the property pending the outcome of the suit.

Section 10 allows the property to be forfeited if the owner had prior notice by any agency that could have brought suit that there was a nuisance on the property, even if the notice was not issued by the agency that ultimately brought suit.

This act is effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT #2 Moore 7/6 **ATTACHMENT VII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-6-99

S. B. No. 929 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Moore

Sen.)

moves to amend the bill on page 6, line 9

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"forthwith enter upon the property and make and return into court an inventory of the personal property and ";

and on page 7, line 29

by deleting "intent to sale," and inserting "intent to sell,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT #2 ATTACHMENT VIII

(Please type or use ballpoint pen) Blue 7/6/99

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 929 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Blue
Sen.)

1 moves to amend the bill on page 5, line 23-24
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines.
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 929 A BILL TO BE ENTITLED AN ACT TO REVISE THE ABATEMENT OF NUISANCE STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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 995
Judiciary II Committee Substitute Adopted 4/27/99

Short Title: Police Peer Counselor Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Peer support group counselors.**

(a) Definitions. The following definitions apply in this section:

(1) Client law enforcement employee. -- Any law enforcement employee or a member of his or her immediate family who is in need of and receives peer support counseling services offered by the officer's employing law enforcement agency.

(2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.

(3) Peer support group counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:

a. Has received training to provide emotional and moral support and counseling to client officers and their immediate families; and

b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client officer.

(4) Privileged communication. -- Any communication made by a client law enforcement employee or a member of the client law

enforcement employee's immediate family, to a peer support group counselor while receiving counseling.

(b) No person who is authorized to be a Police Peer Support Group Counselor shall be required to disclose any information that he or she acquired in rendering Police Peer Support services, and which information was necessary to enable him or her to render Police Peer Support services. Information obtained by the police peer support group counselor shall be furnished only upon the authorization of the client or if deceased, the executor, administrator, or in the case of unadministrated estates, the next of kin. Any resident or presiding judge may, subject to G.S. 8-53.6, compel disclosure, necessary to the proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

(c) The privilege established by subsection (b) of this section shall not apply:

(1) If the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support counseling services.

(2) To communications made while the peer support group counselor was not acting in his or her official capacity as a peer support group counselor.

(d) Notwithstanding the provisions of this section, the peer group counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S995-PCSSA-003
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL NO. 995
THIS IS A DRAFT 2-JUL-99 13:34:41
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

<

Short Title: Police Peer Counselor Privilege. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"§ 8-53.9. Peer support group counselors.

(a) Definitions. The following definitions apply in this section:

(1) Client law enforcement employee. -- Any law enforcement employee or a member of his or her immediate family who is in need of and receives peer counseling services offered by the officer's employing law enforcement agency.

(2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.

(3) Peer counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:

a. Has received training to provide emotional and moral support and counseling to client law

enforcement employees and their immediate families; and

b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client law enforcement employee.

(4) Privileged communication. -- Any communication made by a client law enforcement employee or a member of the client law enforcement employee's immediate family, to a peer counselor while receiving counseling.

(b) A peer counselor shall not disclose any privileged communication that was necessary to enable the counselor to render counseling services unless one of the following apply:

(1) The disclosure is authorized by the client or, if the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministrated estates, the client's next of kin.

(2) The disclosure, is necessary to the proper administration of justice and, subject to G.S. 8-53.6, is compelled by a resident or presiding judge. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

(c) The privilege established by this section shall not apply:

(1) If the peer counselor was an initial responding officer, a witness, or a party to the incident that prompted the delivery of peer counseling services.

(2) To communications made while the peer counselor was not acting in his or her official capacity as a peer counselor.

(3) To communications related to a violation of criminal law. This subdivision does not require the disclosure of otherwise privileged communications related to an officer's use of force.

(d) Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer

counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

ATTACHMENT XII

S995:
Police Peer Counselor Privilege

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Odom
Date:	May 27, 1999	**Summary by:**	Susan L. Hayes, Committee Counsel; Ed Rossi, Staff Attorney;
Version:	S995-PCCSA-001		

SUMMARY: ***Senate bill 995 creates a new testimonial privilege for police peer group counselors..***

CURRENT LAW: There are currently eight professional testimonial privileges.[1] Licensed counselors and family therapists already enjoy testimonial privileges. However no testimonial privilege currently exists for peer group counselors.

Traditionally, the privilege belongs to the client. If the client waives the privilege the professional can be compelled to testify. See State v. Bryant, 5 N.C. App. 21 (1969) (A physician or surgeon may not refuse to testify; the privilege is that of the patient); Reserve Life Ins. Co. v. Davis Hosp., 36 F.R.D. 434 (W.D.N.C. 1965); G.S. § 8-53.2 (The privilege between clergymen and communicants does not apply where the communicant waives the privilege); G.S. § 8-53.4 (School counselor privilege does not apply where student waives privilege in open court). Moreover, with the exception of the clergymen-communicant privilege, in every instance where the General Assembly created a testimonial privilege, it also gave a court discretion to compel testimony when to do so would serve the interest of justice. See G.S. § § 8-53, 8-53.3, 8-53.4, 8-53.6, 8-53.7, 8-53.8, and 8-53.9.

BILL ANALYSIS: Senate Bill 995 provides a testimonial privilege for police peer support group counselors. Police counselors shall not be required to disclose information that was acquired in rendering services to a client law enforcement employee and which information was necessary to enable the counselor to render the services. The information shall be furnished only upon the authorization of the client and or if deceased, the client's estate. However, a judge may compel disclosure when necessary to the proper administration of justice.

The privilege does not apply when the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of services, or to communications made while the peer support group counselor was not acting in their official capacity.

The privilege is not grounds for failure to report suspected child abuse or neglect or a disabled adult suspected to be in need of protective services, and is not grounds for excluding evidence of the abuse of a child or disabled adult.

The act is effective December 1, 1999 and applies to all actions and proceedings pending on or after that date.

[1] Physician-patient; clergymen-communicants; psychologist-client; school counselor; family therapist; social worker; counselor; and Optometrist-patient.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 995 A BILL TO BE ENTITLED AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

☐ 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

HOUSE JUDICIARY I COMMITTEE

July 8, 1999

Agenda

Senate Bill 170 – Restructure Civil Contempt
Senator Carpenter

Senate Bill 393 – Written Motions/Supporting Briefs
Senator Miller

HOUSE JUDICIARY I COMMITTEE
July 8, 1999
Minutes

The House Judiciary I Committee met on Thursday, July 8, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Gray, Miller, Nesbitt and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Senator Carpenter was recognized to continue the discussion of **Senate Bill 170, AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT**. The bill was explained and discussed during the May 6, 1999 meeting of the committee.

Chairman Hackney offered a proposed committee substitute, (Attachment II), to Senate Bill 170. He said that the committee substitute solved the basic problem that Senator Carpenter was attempting to solve regarding the establishing of a limit on the time a person can be in prison for civil contempt. He said that a judge in the western part of the state had called to his attention that it was unconstitutional, in his view, to punish someone for civil and criminal contempt. He stated that an attempt had been made to solve that in the committee substitute.

Representative Gray moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Susan L. Hayes, Committee Counsel, was recognized to explain the proposed committee substitute. She said that a specific requirement that the court find that the noncompliance is willful had been added. She said that this is essentially a codification of what case law has already said. Ms. Hayes stated that another change involved subsection (b). The language in that subsection states that one can be imprisoned as long as the civil contempt continues, subject to limitations which are listed on page 2 of the committee substitute, *except* for when the civil contempt is for failure to pay child support or failure to comply with an order to perform an act that does not require the payment of money. The limitations are outlined on page 2, lines 14-24. Chairman Hackney noted that the changes made in Sections 4 and 5 of the bill allow for a motion for civil contempt without a show cause hearing, but without the burden of proof change, which attends a show cause hearing. Additional explanation of the committee substitute may be found in the bill analysis prepared by Ms. Hayes, (Attachment III).

Committee discussion followed.

An amendment was offered by Representative Nesbitt, (Attachment IV), who moved its adoption. The amendment added an affidavit requirement setting forth the reasons why the alleged contemn should be held in civil contempt. The motion carried and the amendment was adopted.

Senator Carpenter was recognized to comment. He expressed support for the changes.

Mr. Matt Osbourne, Administrative Office of the Courts, commented briefly on the bill.

Representative Nesbitt moved a favorable report for a new House committee substitute incorporating the amendment adopted by the committee, unfavorable as to Senate committee

substitute. The motion carried, (Attachment V). A copy of the new committee substitute is attached, (Attachment VI).

Senator Miller was recognized to explain **Senate Bill 393, AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY**, (Attachment VII). A proposed House committee substitute was distributed, (Attachment VIII). Chairman Hackney said that the bill was an attempt to cure the surprise problem on written motions and supporting briefs. He further stated that he was uncomfortable with the solution that had been suggested by Senator Miller, and that the proposed committee substitute would prevent surprise, but does not prejudice anyone. He said that other interests had suggested that the same rule should apply to responsive affidavits.

Representative Nesbitt moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Senator Miller was recognized to explain the original bill. He said that the bill was patterned on the recommendations of the Civil Justice Study Commission for advance service of briefs so that the parties would not show up for a hearing on a motion and find out as the hearing begins exactly what the other side is arguing.

Committee discussion followed.

No action was taken on the bill.

The meeting was adjourned at 10:55 a.m.

Joe Hackney
Representative Joe Hackney, Chairman

Emily Reynolds
Emily Reynolds, Committee Assistant

VISITOR REGISTRATION SHEET

JUDICIARY I	July 8, 1999
Name of Committee	Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deborah Ross	ACLU
Matt Osborne	AOC
Charles Cromer	NCATL
Mark Bibbs	Capitol Group
Alan Miles	Bailey & Dixon LLP
LE Hartsell	NC Bar Association
Jack Taylor	NCCATL
Steve Keene	NCMS
Amy Joy Bain	NCMS
Dave Hanna	Smith Anderson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S170-PCSSA-011
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 170
THIS IS A DRAFT 7-JUL-99 13:21:11
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Restructure Civil Contempt . (Public)

Sponsors:

Referred to:

February 25, 199

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21 reads as rewritten:

"**§ 5A-21. Civil contempt; imprisonment to compel compliance.**

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the ~~order; and~~ order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable ~~him~~ the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues, subject to the limitations provided in subsections (b1) and (b2) of this section. Notwithstanding subsection (b2) of this section, if a

person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing.

(b1) A person who is found in civil contempt, ~~unless the contempt is failure by a person~~ but was not ~~arrested for the crime~~ arrested, for failure to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General ~~Statutes. In that case, he~~ Statutes may not be imprisoned more than 90 days unless ~~he~~ the person is arrested on probable cause.

(b2) The period of imprisonment for a person found in civil contempt shall not exceed 90 days for the same act of disobedience or refusal to comply with an order of the court. A person who has not purged himself or herself of the contempt within the period of imprisonment imposed by the court under this subsection may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. However, the total period of imprisonment for the same act of disobedience or refusal to comply with the order of the court shall not exceed 12 months, including both the initial period of imprisonment imposed under this section and any additional period of imprisonment imposed under this subsection. Before the court may recommit a person to any additional period of imprisonment under this subsection, the court shall conduct a hearing de novo. The court must enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a), and must find that all of elements of G.S. 5A-21(a) continue to exist before the person can be recommitted. For purposes of this subsection, a person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience, failure, or refusal to comply with an order of the court.

(c) A person who is found in civil contempt under this Article ~~may, nevertheless,~~ shall not, for the same conduct, be found in criminal contempt under Article 1 of this ~~Chapter,~~ Chapter. ~~but the total period of imprisonment arising from the conduct may not exceed the greater of:~~

~~(1) The period during which the contemnor may be imprisoned for civil contempt; or~~

~~(2) The period of imprisonment provided in G.S. 5A-12(a).~~ "

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged ~~contemnor.~~ contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt."

Section 3. G.S. 5A-12(d) reads as rewritten:

"(d) A person held in criminal contempt under this Article ~~may nevertheless,~~ shall not, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. ~~If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(c).~~"

Section 4. G.S. 5A-23(a) reads as rewritten:

"(a) Proceedings for civil contempt are ~~either~~ by motion pursuant to G.S. 5A-23(a1), by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil ~~contempt~~ contempt, or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt."

Section 5. G.S. 5A-23 is amended by adding a new subsection to read:

"(a1) Proceedings for civil contempt may be initiated by motion of an aggrieved party giving notice to the alleged contemnor to appear before the court for a hearing on whether the alleged contemnor should be held in civil contempt. A copy of the motion and notice must be served on the alleged contemnor at least five days in advance of the hearing unless good cause is shown. The burden of proof in a hearing pursuant to this subsection shall be on the aggrieved party."

Section 6. This act becomes effective December 1, 1999 and applies to all proceedings for civil contempt held on or after that date.

SENATE BILL 170:
Restructure Civil Contempt

BILL ANALYSIS

Committee:	House Judiciary 1	**Introduced by:**	Senator Carpenter
Date:	July 8, 1999	**Summary by:**	Susan L. Hayes, Committee Counsel
Version:	S170-PCSSA-011		

SUMMARY: ***The proposed committee substitute for Senate Bill 170 amends the civil contempt law to provide that the period of imprisonment for a person found in civil contempt shall not exceed 90 days. However, a person who has not purged himself or herself of the contempt within the period of imprisonment may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. The maximum period of imprisonment shall not exceed 12 months. Before recommitting a person for an additional term of imprisonment, the court must hold a hearing to determine whether the person has the ability to purge himself or herself of the contempt.***

CURRENT LAW: Under current law, a person found to be in civil contempt by a court may be incarcerated indefinitely until the person complies with the orders of the court and purges himself or herself of the contempt. Civil contempt is permitted under the law to give the court the power to enforce orders of the court. The law requires that the court find that the person has the ability to comply, but that the person refuses to comply with the orders of the court. The person imprisoned is considered to have the ability to gain his or her release by following the orders of the court. Civil contempt differs from criminal contempt in several ways. Relevant to this bill, a person can be held in criminal contempt for a maximum of 30 days as punishment for violating an order of the court.

BILL ANALYSIS:

Section 1 amends current law to also require the court to find that the person's non-compliance is willful before the court can hold a person in civil contempt. Current law only requires a finding of the following: 1) the order remains in force; 2) the purpose of the order may still be served by compliance; and 3) the person to whom the order is directed is able to comply with the order or is able to take measures that would enable the person to comply.

The term of imprisonment for a person found in civil contempt shall not exceed 90 days. However, if a person fails to purge himself or herself of the contempt within the term of imprisonment, the court may recommit the person. The recommitment may be for one or more successive terms of imprisonment, each not to exceed 90 days. The maximum term of imprisonment for the same act of disobedience or refusal to comply with a court order is 12 months, including both the initial term of imprisonment and any subsequent recommitments. The court, on its own motion, must hold a hearing before recommitting a person for civil contempt. A person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience or refusal to comply with the court order.

A person found in civil contempt shall not be found in criminal contempt for the same conduct.

Section 2 makes a clarifying change.

Section 3 amends the criminal contempt statute to correspond with the change in section 1 that a perso may not be held in both civil and criminal contempt for the same conduct.

Section 4 & 5 provide that civil contempt may be initiated by motion of an aggrieved party to themselves show cause why the alleged contemnor should be held in civil contempt, rather than the alleged contemnor showing why they should not be held in civil contempt.

Section 6 makes the bill effective December 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT IV**

(Please type or use ballpoint pen) Nesbitt 7/8

EDITION No. S170-PCSSA-011

H. B. No. _____ DATE _____

S. B. No. 170 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
Sen.)

1 moves to amend the bill on page 3, line 36

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 " days in advance of the hearing unless good cause is shown. The

5 motion must include a sworn statement or affidavit of the

6 aggrieved party setting forth the reasons why the alleged

7 contemnor should be held in civil contempt. The "

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SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 170 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT AND TO RAISE THE STANDARD OF PROOF IN PROCEEDINGS FOR CIVIL CONTEMPT.

☐ 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 170
Judiciary I Committee Substitute Adopted 4/15/99
Proposed Committee Substitute S170-PCSA664-SA

Short Title: Restructure Civil Contempt. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21 reads as rewritten:

"**§ 5A-21. Civil contempt; imprisonment to compel compliance.**

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the ~~order; and~~ order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable ~~him~~ the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues, subject to the limitations provided in subsections (b1) and (b2) of this section. Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary

judgment, the person may be imprisoned as long as the civil contempt continues without further hearing.

(b1) A person who is found in civil contempt, ~~unless the contempt is failure by a person~~ but was not ~~arrested for the crime~~ arrested, for failure to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General ~~Statutes. In that case, he~~ Statutes may not be imprisoned more than 90 days unless ~~he~~ the person is arrested on probable cause.

(b2) The period of imprisonment for a person found in civil contempt shall not exceed 90 days for the same act of disobedience or refusal to comply with an order of the court. A person who has not purged himself or herself of the contempt within the period of imprisonment imposed by the court under this subsection may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. However, the total period of imprisonment for the same act of disobedience or refusal to comply with the order of the court shall not exceed 12 months, including both the initial period of imprisonment imposed under this section and any additional period of imprisonment imposed under this subsection. Before the court may recommit a person to any additional period of imprisonment under this subsection, the court shall conduct a hearing de novo. The court must enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a), and must find that all of elements of G.S. 5A-21(a) continue to exist before the person can be recommitted. For purposes of this subsection, a person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience, failure, or refusal to comply with an order of the court.

(c) A person who is found in civil contempt under this Article ~~may, nevertheless,~~ shall not, for the same conduct, be found in criminal contempt under Article 1 of this ~~Chapter,~~ Chapter. ~~but the total period of imprisonment arising from the conduct may not exceed the greater of:~~

~~(1) The period during which the contemnor may be imprisoned for civil contempt; or~~

~~(2) The period of imprisonment provided in G.S. 5A-12(a).~~ "

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged ~~contemnor.~~ contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt."

Section 3. G.S. 5A-12(d) reads as rewritten:

"(d) A person held in criminal contempt under this Article ~~may nevertheless,~~ shall not, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. ~~If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(e).~~"

Section 4. G.S. 5A-23(a) reads as rewritten:

"(a) Proceedings for civil contempt are ~~either~~ by motion pursuant to G.S. 5A-23(a1), by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil ~~contempt~~ contempt, or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt."

Section 5. G.S. 5A-23 is amended by adding a new subsection to read:

"(a1) Proceedings for civil contempt may be initiated by motion of an aggrieved party giving notice to the alleged contemnor to appear before the court for a hearing on whether the alleged contemnor should be held in civil contempt. A copy of the motion and notice must be served on the alleged contemnor at least five days in advance of the hearing unless good cause is shown. The motion must include a sworn statement or affidavit by the aggrieved party setting forth the reasons why the alleged contemnor should be held in civil contempt. The burden of proof in a hearing pursuant to this subsection shall be on the aggrieved party."

Section 6. This act becomes effective December 1, 1999, and applies to all proceedings for civil contempt held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 393
Judiciary II Committee Substitute Adopted 3/24/99

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support of certain dispositive motions -- When required. -- In actions in superior court, every brief or memorandum in support of a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of

the parties as to one or more of the claims or parties in the action shall be served by the moving party upon each of the parties no later than five days prior to the hearing on the motion, and every brief in opposition to the motion shall be served by any party opposing the motion upon each of the parties no later than two days prior to the hearing on the motion. The parties may, by consent, alter these periods of time. A brief or memorandum that is not served as required by this rule shall not be considered, unless otherwise ordered by the court for good cause shown or by the consent of the parties.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such

certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"For example, for the presiding judge to consider a brief or memorandum on a motion calendar for a Monday, the moving party must serve the brief or memorandum by the close of business on the preceding Monday. Any party opposing the motion must serve a brief or memorandum by the close of business on the preceding Thursday. The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

Section 5. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs and memoranda subject to this act filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 393
Judiciary II Committee Substitute Adopted 3/24/99
Proposed House Committee Substitute S393-PCSSA-001

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall

be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support of certain dispositive motions -- When required. -- In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served by the moving party upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served by the moving party on the other parties at least two days before the hearing on the motion, then the responding parties shall be entitlted to a continuance of at least two days between the service of the brief or memorandum and the hearing in which to respond to the brief or memorandum and may do so by a brief or memorandum which shall be served on the moving party prior to the hearing. The court shall take no other action against the moving party for failure to serve the brief or memorandum within the required time. The parties may, by consent, alter these periods of time. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission,

filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 5. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs and memoranda subject to this act filed on or after that date.

HOUSE JUDICIARY I COMMITTEE

July 13, 1999

Agenda

Senate Bill 393 – Written Motions/Supporting Briefs
Senator Miller

HOUSE JUDICIARY I COMMITTEE
July 13, 1999
Minutes

The House Judiciary I Committee met on Tuesday, July 13, 1999 at 10:00 a. m., in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Gardner, Gray, Insko, Miller and Thompson. The Visitation Registration Sheet, (Attachment I), denotes visitors.

Chairman Hackney made brief comments regarding the House committee substitute for **Senate Bill 393, AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY**, (Attachment II). He stated that Judge Tom Ross had heard the explanations of the Miller and Hackney versions during the previous meeting and was not satisfied with either version. He asked for the opportunity to offer a compromise. Chairman Hackney said that the compromise basically supplants the language in the Hackney version regarding what happens if one does not supply the written motions by saying: "if a party fails to serve a brief or memorandum as required by this rule, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require." Chairman Hackney stated that the two-working day rule was preserved.

Senator Miller was recognized for comment. He stated support for the compromise.

Mr. Jim Kerr, Smith Anderson Law Firm, speaking for the Medical Society of North Carolina, stated his support for the proposed compromise. He stated, however, that he felt the bill does not accomplish that which it seeks to accomplish.

Mr. Dick Taylor, Academy of Trial Lawyers, stated support for the compromise.

Committee discussion followed.

Judge Tom Ross was recognized for comment on the compromise.

Representative Thompson offered two amendments, (Attachment III and IV), and moved adoption. The amendments would add the language of the Ross compromise.

Upon vote of the committee, the amendments were adopted.

Representative Gray moved that the amendments be incorporated into a new House committee substitute, that the committee substitute be given a favorable report, and that the Senate committee substitute be given an unfavorable report. The motion carried, (Attachment V). A copy of the committee substitute is attached, (Attachment VI).

The meeting was adjourned at 10:40 a. m.

Joe Hackney
Representative Joe Hackney
Committee Chairman

Emily Reynolds
Emily Reynolds
Committee Clerk

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 13, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Charles Cromer	ncatl
Mary Ann Talley	Atty.
Dirk Tyson	NCAA
Jim Kerr	Smith, Anderson
Mike Slaughter	NCBA
Mark Season	Capital Group
Zeb Talley	ZDA PA
Lisa Reyes	THE INSIDER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 393
Judiciary II Committee Substitute Adopted 3/24/99
Proposed House Committee Substitute S393-PCSSA-002

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS AND OPPOSING AFFIDAVITS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service <u>of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers</u> -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall

be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support of certain dispositive motions -- When required. -- In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, then the parties shall be entitlted to a continuance of at least two days between the service of the brief or memorandum and the hearing in which to respond to the brief or memorandum and may do so by a brief or memorandum which shall be served prior to the hearing. The court shall take no other action against any party for failure to serve the brief or memorandum within the required time. The parties may, by consent, alter these periods of time. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon

motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 5. G.S. 1A-1, Rule 6(d) reads as rewritten:

"(d) For motions, affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time

specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits ~~may unless the court permits them to be served at some other time be served not later than one day~~ shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, then the parties shall be entitlted to a continuance of at least two days between the service of the opposing affidavit and the hearing in which to respond to the affidavit and may do so by an affidavit which shall be served prior to the hearing. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time."

Section 6. G.S. 1A-1, Rule 56(c) reads as rewritten:

(c) Motion and proceedings thereon. -- The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party ~~prior to the day of hearing~~ may serve opposing ~~affidavits.~~ affidavits at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, then the parties shall be entitlted to a continuance of at least two days between the service of the opposing affidavit and the hearing in which to respond to the affidavit and may do so by an affidavit which shall be served prior to the hearing. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party."

Section 7. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs, memoranda, and affidavits subject to this act filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT III

(Please type or use ballpoint pen)

EDITION No. S393-PCSSA-002

H. B. No. _____ DATE _____

S. B. No. 393 Judge Ford language Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Thompson
(Sen.)

moves to amend the bill on page 2, line 3

( ) WHICH CHANGES THE TITLE

by inserting "or opposition" between "support" and "of"

and on page 2, lines 12-19, by rewriting the lines to read:

"least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT ATTACHMENT IV

(Please type or use ballpoint pen)

EDITION No. S393-RSSA-002

H. B. No. _____ DATE _____

S. B. No. 393 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Thompson
Sen.)

moves to amend the bill on page 5, line 10-13

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require."

And on page 5, lines 23-27 by rewriting the lines to read:

"least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. For the purpose of this"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 393 A BILL TO BE ENTITLED AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

☐ 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 393
Judiciary II Committee Substitute Adopted 3/24/99
Proposed House Committee Substitute S393-PCS1790-SA

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS AND OPPOSING AFFIDAVITS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions -- When required. -- In actions in superior court, every brief or

memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which

service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 5. G.S. 1A-1, Rule 6(d) reads as rewritten:

"(d) For motions, affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits ~~may unless the court permits them to be served at some other time be served not later than one day~~ shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time."

Section 6. G.S. 1A-1, Rule 56(c) reads as rewritten:

"(c) Motion and proceedings thereon. -- The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party ~~prior to the day of hearing~~ may serve opposing ~~affidavits.~~ affidavits at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this rule only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party."

Section 7. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs, memoranda, and affidavits subject to this act filed on or after that date.

2000

HOUSE JUDICIARY I COMMITTEE

MINUTES

HOUSE JUDICIARY I COMMITTEE

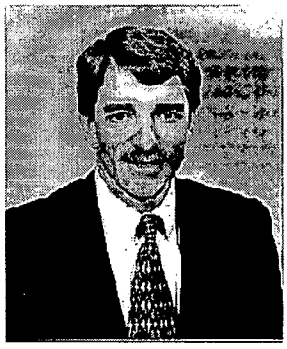
SHORT SESSION
2000

REPRESENTATIVE JOE HACKNEY
CHAIRMAN

REPRESENTATIVE MARTIN NESBITT
VICE CHAIRMAN

EMILY REYNOLDS
COMMITTEE ASSISTANT

HOUSE JUDICIARY I COMMITTEE
2000 Short Session



Representative Hackney
Chairman



Representative Nesbitt
Vice Chairman



Rep. Alexander



Rep. Blue



Rep. Boyd-McIntyre



Rep. Clary



Rep. Ellis



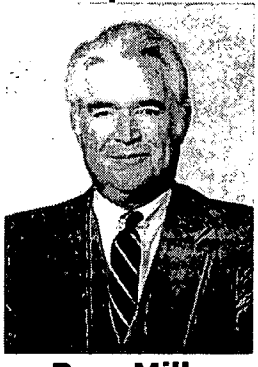
Rep. Gardner



Rep. Gray



Rep. Insko



Rep. Miller



Rep. Redwine

Rep. Sossoman



Rep. Thompson

HOUSE JUDICIARY I COMMITTEE
1999-2000 Session
Membership

Name	Office #	Telephone	Legis. Assist.
Joe Hackney, Chairman	2207	733-5752	Emily Reynolds
Martin Nesbitt, Vice Chairman	2204	733-5956	Jan Lee
Martha Alexander	2121	733-7208	Ann Faust
Dan Blue	1227	715-2528	Lin Threatt
Flossie Boyd-McIntyre	507	733-5905	
Debbie Clary	1211	733-5654	Mary Jamison
Sam Ellis	607	733-5755	Allison Phillips
Charlotte Gardner	604	733-5802	Barbara Hocutt
Lyons Gray	533	733-5820	Cindy Brooks
Verla Insko	1323	733-5775	Pat Baker
George Miller	532	733-5995	Betty Angell
~~Richard Moore~~	1220	733-5746	Susan Burleson
David Redwine	635	733-5829	Nancy Brantley
Gregg Thompson	1002	733-5828	Edna Sykes

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	5/16	5/23	5/25	5/30	6/6	6/22	6/30								
Representative Hackney	✓	✓	✓	✓	✓	✓	✓								
Representative Nesbitt			✓		✓	✓									
Representative Alexander	✓	✓			✓	✓	✓								
Representative Blue		✓	✓		✓	✓	✓								
Representative Boyd-McIntyre						✓	✓								
Representative Clary	✓		✓	✓	✓	✓	✓								
Representative Ellis	✓	✓	✓	✓	✓	✓									
Representative Gardner	✓		✓	✓	✓	✓	✓								
Representative Gray				✓	✓	✓	✓								
Representative Insko	✓		✓	✓	✓	✓	✓								
Representative Miller	✓						✓								
Representative Redwine				✓			✓								
Representative Sossamon As of May 23,2000		✓		✓	✓	✓	✓								
Representative Thompson		✓	✓	✓	✓	✓	✓								
Representative Baddour, Ex-officio							✓								
Representative Cunningham, Ex-officio															
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio															

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY I Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	02-16-99	02-24-99
H 41	BROWN	CARTWAY AMENDMENT	HF-POSTPONED INDEFINITELY	02-16-99	
H 57=	ALEXANDER	MOTOR VEHICLE OCCUPANT RESTRAINTS	*HF-POSTPONED INDEFINITELY	03-22-99	04-05-99
H 57=	ALEXANDER	MOTOR VEHICLE OCCUPANT RESTRAINTS	*HF-POSTPONED INDEFINITELY	04-08-99	
H 111=	SUTTON	TRAFFIC ENFORCEMENT STATISTICS	HF-POSTPONED INDEFINITELY	02-18-99	
H 198=	NESBITT	ADULT CARE HOME LICENSURE	HF-POSTPONED INDEFINITELY	03-01-99	
H 199=	HACKNEY	SAFE FAMILIES ACT	HF-POSTPONED INDEFINITELY	03-01-99	
H 247	WAINWRIGHT	FUNERAL PROCESSIONS	*R -CH. SL 99-0441	04-05-99	04-07-99
H 298	HACKNEY	STUDY CONDITIONAL RELEASE	*HF-POSTPONED INDEFINITELY	04-15-99	06-15-99
H 316=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*R -CH. SL 99-0121	03-24-99	04-23-99
H 494	HACKNEY	UNIFORM CHILD-CUSTODY ACT	*R -CH. SL 99-0223	03-18-99	04-19-99
H 495	HACKNEY	FAMILY LAW ARBITRATION ACT	*R -CH. SL 99-0185	03-18-99	04-12-99
H 517=	MOORE R	STOP THREATS/ACTS OF SCHOOL VIOLENCE	*R -CH. SL 99-0257	05-26-99	
H 660	NESBITT	COLLECTION AGENCY DEFINITION	R -CH. SL 99-0419	03-29-99	04-06-99
H 661	NESBITT	JUVENILE COMMUNITY SERVICE	*R -CH. SL 99-0444	03-29-99	04-06-99
H 853=	HACKNEY	STRUCTURED SETTLEMENT PROTECTION ACT	HF-POSTPONED INDEFINITELY	04-01-99	
H 884=	LUEBKE	MATTHEW SHEPARD MEMORIAL ACT	*HF-FAILED 2ND READING	04-01-99	04-21-99
H 920	STARNES	VEHICULAR INJURY TO PREGNANT WOMAN	HF-POSTPONED INDEFINITELY	04-05-99	
H 924=	NESBITT	MEDIATION SETTLEMENT IN WRITING	*R -CH. SL 99-0354	04-05-99	04-19-99
H 956=	CREECH	PERMANENT REVOCATION HEARING	HF-FAILED 3RD READING	04-08-99	04-23-99
H1022	ALLEN	UNLAWFUL USE OF DRIVERS LICENSE	*R -CH. SL 99-0299	04-14-99	04-23-99
H1030	HACKNEY	TRAILER AMENDMENTS	*R -CH. SL 99-0281	04-14-99	04-21-99
H1048	MILLER G	AMEND RULE 4/MANNER OF SERVICE	*S -REF TO COM ON JUDICI	04-14-99	04-27-99
H1050	REDWINE	DRUG OFFENDER/REQUIRE ACTIVE TIME	HF-POSTPONED INDEFINITELY	04-14-99	
H1056=	MILLER G	LIMITATION FOR PROD. LIABILITY ACTIO	HF-POSTPONED INDEFINITELY	04-15-99	
H1066	DECKER	BAN PARTIAL-BIRTH ABORTIONS - 2	HF-POSTPONED INDEFINITELY	04-15-99	
H1070	ALEXANDER	MARRIAGE LICENSE CHANGE - 2	HF-POSTPONED INDEFINITELY	04-15-99	
H1107	GARDNER	CREDIT CARD SOLICITATION/COLLEGES	*S -REF TO COM ON ED/HIED	04-23-99	04-28-99
H1130	TOLSON	LIMIT Y2K LIABILITY	HF-POSTPONED INDEFINITELY	04-15-99	
H1131=	WALEND	RAISE STATE TORT CLAIMS CAP	*HF-POSTPONED INDEFINITELY	04-15-99	05-31-99

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.

Bills Acted on during Short Session 2000

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: JUDICIARY I Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1133	HACKNEY	HEALTH INS./LIABILITY	*S -REF TO COM ON JUDICI	04-15-99	04-23-99
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	04-15-99	04-22-99
H1157	NESBITT	INCREASE SMALL CLAIMS AMOUNT	HF-POSTPONED INDEFINITELY	04-15-99	
H1169	THOMPSON	SUCCESSION TECHNICAL AMENDMENTS	*S -REF TO COM ON JUDICI	04-15-99	04-22-99
H1194	NESBITT	NEED CONSENT TO TAPE CONVERSATION	HF-POSTPONED INDEFINITELY	04-15-99	
H1200=	MILLER G	JOURNALISTS' TESTIMONIAL PRIVILEGE	*S -REF TO COM ON JUDICI	04-15-99	04-27-99
H1231	KINNEY	SAFE STORAGE OF FIREARMS	HF-POSTPONED INDEFINITELY	04-15-99	
H1238	NESBITT	CONDEMNATION LAW MODIFIED	HF-POSTPONED INDEFINITELY	04-15-99	
H1245	CLARY	3RD DEGREE SEX OFFENSE	*S -REF TO COM ON JUDICII	04-15-99	04-27-99
H1248	HACKNEY	G.S. 14-190.9 CONST. CONFORMITY	HF-POSTPONED INDEFINITELY	04-15-99	
H1499=	CRAWFORD	INTERLOCK/OPEN CONTAINER CHANGES	R -CH. SL 00-0155	00-05-10	00-06-06
H1569=	HACKNEY	EXTEND BILLBOARD MORATORIUM	HF-POSTPONED INDEFINITELY	00-05-17	
S 34=	COCHRANE	EMER SHELTER/HEALTH FACIL.RULES WAIV	*R -CH. SL 99-0307	04-28-99	06-29-99
S 65=	PURCELL	MOTOR VEHICLE OCCUPANT RESTRAINTS	*R -CH. SL 99-0183	04-22-99	05-18-99
S 76=	BALLANCE	TRAFFIC ENFORCEMENT STATISTICS	*R -CH. SL 99-0026	03-11-99	03-31-99
S 120	ALLRAN	UP SOME UNDERAGE SALES PENALTIES	R -CH. SL 99-0433	05-03-99	06-29-99
S 170	CARPENTER R	RESTRUCTURE CIVIL CONTEMPT	*R -CH. SL 99-0361	04-22-99	07-08-99
S 197=	COOPER	SAFE FAMILIES ACT	*R -CH. SL 99-0023	03-15-99	03-22-99
S 247	LEE	SOUTHEAST COMPACT COMMISSION	R -CH. SL 99-0357	04-27-99	07-15-99
S 288	REEVES	UNSOLICITED COMM. ELEC. BULK MAIL	*R -CH. SL 99-0212	04-28-99	06-01-99
S 297	CLODFELTER	LTD. PTRNERSP/PROF. LIABILITY CHANGE	*R -CH. SL 99-0362	04-27-99	06-16-99
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*R -CH. SL 00-0127	00-05-31	00-06-22
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*R -CH. SL 00-0127	04-05-99	07-14-99
S 426	CLODFELTER	DISSENTERS' RIGHTS AMENDMENTS	R -CH. SL 99-0141	04-22-99	05-13-99
S 595	MARTIN R	MODIFY NE REGIONAL COMMISSION	*HF-POSTPONED INDEFINITELY	00-06-21	00-06-30
S 746=	COOPER	STRUCTURED SETTLEMENT PROTECTION ACT	*R -CH. SL 99-0367	04-27-99	07-01-99
S 774	CLODFELTER	ELECTRONIC PROXIES FOR NONPROFITS	*R -CH. SL 99-0139	04-22-99	05-13-99
S 775	CLODFELTER	ALLOW ELECTRONIC/TELEPHONIC PROXIES	*R -CH. SL 99-0138	04-22-99	05-13-99
S 835	CLODFELTER	REVISE LAW GOVERNING MERGERS	*R -CH. SL 99-0369	04-28-99	06-30-99
S 867	GULLEY W	REAL ESTATE LICENSURE LAW CHANGES	*R -CH. SL 99-0229	04-29-99	05-26-99

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 I Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 888	COOPER	DRUG LAW AMENDMENTS	*R -CH. SL 99-0370	04-28-99	07-07-99
S 929	REEVES	ABATEMENT OF NUISANCES	*R -CH. SL 99-0371	05-03-99	07-07-99
S 995	ODOM	POLICE PEER COUNSELOR PRIVILEGE	*R -CH. SL 99-0374	04-28-99	07-07-99
S1009=	HOYLE	JOURNALISTS' TESTIMONIAL PRIVILEGE	*R -CH. SL 99-0267	04-27-99	06-14-99
S1021	CLODFELTER	COMPUTERIZED EVIDENCE AMENDMENTS	R -CH. SL 99-0131	04-29-99	05-13-99
S1074	REEVES	YEAR 2000 CONSUMER PROTECTION ACT	*R -CH. SL 99-0308	04-28-99	06-16-99
S1113	KERR	WORKERS' COMP/MED. PROVIDER CONTACT	*R -CH. SL 99-0150	04-29-99	05-25-99
S1161	HAGAN	EXTEND BILLBOARD MORATORIUM	*HF-POSTPONED INDEFINITELY	00-06-29	
S1275=	JORDAN	EXTEND BILLBOARD MORATORIUM	R -CH. SL 00-0101	00-06-29	00-06-30

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

HOUSE JUDICIARY I COMMITTEE

SHORT SESSION
2000

INDEX OF LEGISLATION COVERED DURING EACH MEETING

May 16, 2000	House Bill 1499 – Interlock/Open Container Changes
May 23, 2000	House Bill 1499 – Interlock/Open Container Changes
May 25, 2000	House Bill 1499 – Interlock/Open Container Changes
May 30, 2000	House Bill 1499 – Interlock/Open Container Changes
June 6, 2000	House Bill 1499 – Interlock/Open Container Changes
June 22, 2000	Senate Bill 393 – Written Motions/Supporting Briefs
June 30, 2000	Senate Bill 1275 Extend Billboard Moratorium

HOUSE JUDICIARY I COMMITTEE

2000
SHORT SESSION

MINUTES

May 16, 2000 – June 30, 2000

House Judiciary I Committee
May 16, 2000

Minutes

The House Judiciary I Committee met on Tuesday, May 16, 2000, at 10:00 a.m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Clary, Ellis, Gardner, Insko and Miller. A copy of the agenda and the Visitor Registration Sheet are included in the attachments to the minutes, (Attachments I and II

Mr. Frank Folger, Research Division, was introduced to the committee members. Mr. Folger recently joined the General Assembly staff and was assigned as a legal counsel to the House Judiciary I Committee.

Chairman Hackney stated that the committee would discuss House Bill 1499, AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERQL HIGHWAY FUNDS, (Attachment III). He said that the bill was recommended by the Transportation Oversight Study Commission and noted that Representative Crawford, sponsor of the bill, was unable to attend the meeting, but that discussion would begin. He said that this bill would serve as the vehicle for the current DWI recommendations. Chairman Hackney stated that the changes in the bill were necessary in order to receive federal funds for the highway system rather than having them go to the Governor's Highway Safety Program. He noted that a proposed committee substitute, (Attachment IV) was being distributed and the committee substitute and the original bill would be explained by Ms. Susan Hayes, Committee Counsel.

Ms Hayes stated that Section I of the bill contained technical changes that were required by federal law regarding ignition interlock requirements and she pointed out the various changes. She said that Section II of the bill addressed the open container provisions that were in the House version of the 1999 DWI bill, but were removed in the Senate version. She said that federal law is requiring that all open containers of alcohol be prohibited in motor vehicles. The current law states that as long as the driver is not drinking and has not been drinking, an open container of beer or wine can be in the possession of passengers in a motor vehicle. She noted that an open container of liquor has never been allowed in the passenger compartment and still will not be allowed.

Ms. Hayes stated that the committee substitute creates a second offense for an open container in a vehicle. If the driver has not been drinking, the offense will be an infraction. If the driver has been drinking, the offense will be a misdemeanor, as it is under current law. The bill also prohibits open containers while a vehicle is on the right-of-way of any public highway. Ms. Hayes noted that the bill excludes passengers in the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation, in the living quarters of a motor home or house car or a house trailer.

There was brief committee discussion.

Chairman Hackney reminded the committee that Congress does not have the authority to require that the Legislature pass the legislation, but that Congress can condition the receipt of federal funds upon passage of the legislation.

Ms. Ruth Sappie, Department of Transportation, was recognized. She noted that the federal deadline for compliance is September 30, 2000 in order to avoid the transfer of $14 million from the highway construction program to the Governor's Highway Safety Program. She said the department would like to keep the funds in the construction program.

Representative Ellis requested an amendment to remove the language "public vehicular area" from the bill.

Ms. Nicole Dussenberry, DWI Task Force, was recognized and spoke in support of the DWI recommendations.

Representative Ellis questioned whether the language "all" vehicles wold include those vehicles that are not required to be registered. The Chairman asked that counsel verify this prior to the next meeting.

Representative Hackney asked if interlock devices would be required for motorcycles.

Mr. Jerry Mobley, Monitech, Inc. responded that there were no such requirements and presently the interlock device technology requires a waterproof environment for installation.

Representative Ellis asked if the legislation contained language saying that a person who is required to have an interlock device can only legally operate a vehicle with an interlock device on it.

Ms. Hayes replied that this provision is in the bill.

Chairman Hackney asked that Ms. Sappie and Ms. Dussenbury make inquires of the federal government to determine the interlock requirement for motorcycles.

The meeting was adjourned at 10:30.

Representative Joe Hackney, Chairman

Emily Reynolds, Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

May 16, 2000

Agenda

House Bill 1499 – Interlock/Open Container Changes
Representative Crawford

VISITOR REGISTRATION SHEET

House Judiciary I Committee — Name of Committee

May 16, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Dusenberry	DWI Task Force
Shannon Bullock	Governor's Hwy Safety Program
Ruth Sappenfield	
Eugene Cella	DMV
Sandy Sands	WCSR
Joe Moldenhauer	Monitech, Inc
Jacob Kumpath	NC Gov's Inst. on Alcohol + SA
Mark Bryant	DL
Mark Osborne	AOC
John Rustin	NCFPC
Doug Rogers	NCDOT
Jonathan Williams	CCPS
Melissa Lovell	DOJ
Jean Welch Lovell	DOJ
Fred Edwards	DMV
Deeny Register	DMV
James Bell	Atty.
Calvin Lawrence	PARM - LEGAL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a)

of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-CSSA-001

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, TO AMEND THE DWI SEIZURE AND FORFEITURE LAW REGARDING DISPOSAL OF ABANDONED VEHICLES, AND TO MAKE TECHNICAL CHANGES TO THE DWI LAWS AND OTHER LAWS, AS RECOMMENDED BY THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the

system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area. No person shall possess or consume an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right of way of a highway.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon,

hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;
(4) The person was notified of the rights in subsection (a); and
(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction and an officer has reasonable grounds to believe the person has violated a restriction not relating to an alcohol concentration, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 4. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;
(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was

revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway <u>or public vehicular area</u> in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's driver's license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 5. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 6. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent to~~ similar conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per

hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 7. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 8. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 9. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if

the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 10. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 11. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 12. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if

alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 13. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 14. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 15. This act become effective July 1, 2000, and applies to offenses committed on or after that date.

House Judiciary I Committee
May 23, 2000

Minutes

The House Judiciary I Committee met on Tuesday, May 23, 2000, at 10:00 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Alexander, Blue, Ellis, Sossamon and Thompson. The agenda and the Visitor Registration Sheet are attached, (Attachments I and II).

Representative Leonard Sossamon, newly appointed member of the General Assembly, and the Judiciary I committee, was introduced and welcomed. He made brief remarks about his background.

Chairman Hackney announced that discussion would continue on House Bill 1499, AN ACT TO AMEND NORTH CAROLIN LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, (Attachment III). The bill was explained and briefly discussed during the Judiciary I meeting on May 16, 2000.

A new proposed committee substitute was distributed, (Attachment IV).

Representative Blue moved that it be adopted for the purpose of discussion. The motion carried.

Ms. Susan Hayes, Committee Counsel, was recognized to explain the committee substitute. She distributed a bill summary and analysis, (Attachment V) and noted the changes contained in the committee substitute. She noted several changes that were made in the committee substitute. One change added the word "registered" vehicles owned by a repeat offender shall have an ignition interlock system. Another change involves the open container provision that is being required by federal mandate in order to avoid the transfer of highway funds. Current law provides that as long as the driver is not drinking or has not been drinking, passengers may consume or have in their possession open containers of beer and unfortified wine. The change would outlaw possession or consumption of all open containers in motor vehicles. The change creates an infraction if the driver has not been drinking and the passengers have an open container of beer or wine. The infraction can be charged against the passengers for possessing or consuming in the vehicle. The charges apply to the driver if he is driving either on a public highway or in a public vehicular area. When the car is sitting still, the law applies if the car is on a public highway or public highway right-of-way. The law does not apply to a public vehicular area when the car is sitting still. There is an exception for vehicles "for hire" such as limousines and taxis, and for the living quarters of a motor home, house car, or house trailer. The bill also implements the recommendations of the Governor's DWI Task Force.

Committee discussion followed.

Representative Blue asked if data existed to support the theory that less alcohol in the passenger area of a vehicle provides for fewer incidents of drunk driving and accidents.

Ms. Ruth Sappie, Department of Transportation, replied that they have no specific information at the state level, but that she could check with the UNC Safety Research Center

Representative Blue asked what the fiscal consequences would be of adopting the ignition interlock portion of the legislation, but not the open container provision.

Ms. Sappie responded that each provision of the bill mandates a $7 million dollar transfer of funds in the first two years of noncompliance and doubles in the third year. Therefore, if the repeat offender section were adopted, but not the open container provision, it would result in a $7 million transfer from the construction fund to safety program for the first two years, and $14 million thereafter.

Representative Hackney noted that the funds would remain in the state, but would be in the hazard mitigation program rather than in the highway construction program.

Representative Blue expressed concern regarding Congress' intrusion on state policy.

Representative Crawford noted support for the changes in order to get the highway funding.

The meeting was adjourned at 10:45 a.m.

Joe Hackney, Chairman

Emily Reynolds, Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

May 23, 2000

Agenda

House Bill 1499 – Interlock/Open Container Changes
Representative Crawford

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I Committee — **May 23, 2000**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Danny Rogers	NCDOT
Ruth Sappaig	NCDOT
[illegible]	DMV
Nicole Duisenberry	DWI Task Force
Matt Osborne	AOC
Lloyd Edwards	DMV ENFORCEMENT
Addie Avery	DMV Driver License
Jerry Mobley	Monitech, Inc.
Gary Harris	NC Petroleum Mkts Assoc.
Doug Howey	NC Petroleum Mkts. Assoc.
Christie Beaufort	CAPA
John Rustin	NCFPC
N L McBride	YDA
Joseph Reynolds	NC Gov's Institute on Alcohol + SA
Rev. MARK H. CREECH	CHRISTIAN ACTION LEAGUE OF N.C., INC.
Shannon Bullock	GHSP
W Potter Jr	Self
[illegible]	Parker, Poe, Adams + Bernstein, LLP
[illegible]	Mayes Van Alen
[illegible]	Scenic NC Inc.
[illegible]	BPMLL
Paul Pulley	NCATL
Bill Taylor	NCATL
Calvin Lawrence	Legal Asst. Dwelling

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a)

of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-CSSA-002

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped

with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subsection (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subsection (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subsection (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

" (f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he

has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subsection (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area. No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right of way of a highway.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section (i) for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container, (ii) for a passenger to possess an alcoholic beverage other than

in the unopened manufacturer's original container, or (iii) for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation

of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage, (ii) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right of way of a highway, or (iii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right of way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this

section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction and an officer has reasonable grounds to believe the person has violated a restriction not relating to an alcohol concentration, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction

or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming

alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's driver's license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.
(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

" (b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.
(2) That the test results may only be used to prove a person's particular alcohol concentration if:
a. The pair of readings employed are from consecutively administered tests; and
b. The readings do not differ from each other by an alcohol concentration greater than 0.02.
(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any

relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended

or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing

before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this

section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 1499:
Interlock/Open Container Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Crawford
Date:	May 23, 2000	**Summary by:**	Susan L. Hayes
Version:	H1499-CSSA-002		Committee Counsel

SUMMARY: ***The proposed committee substitute for H1499 amends the laws concerning the use of ignition interlock devices by repeat DWI offenders and possession of open containers in vehicles to comply with federal law and avoid a mandatory transfer of federal highway funds. The committee substitute also implements the recommendations of the Governor's DWI Task Force and clarifies the effective date for commercial motor vehicle insurance provisions of Session Law 330 of the 1999 General Assembly.***

BILL ANALYSIS:

Section 1 amends G.S. 20-17.8(b) in two ways. First, the statute is amended to require a person subject to the ignition interlock requirements to install an ignition interlock device on all registered vehicles they own. This change is made to comply with federal law and avoid the transfer of funds. Second, the language designating at what BAC level the ignition interlock must be set is amended to make G.S. 20-17.8 consistent with the provisions of G.S. 20-19 (lower BAC tolerance level for repeat offenders).

Section 2 amends G.S. 20-17.8(f) to clarify that an alcohol concentration report from an ignition interlock device is only admissible when the defendant actually drove the vehicle at the time the BAC reading was over the restriction placed on that person by 20-17.8(b)(3).

Section 3 amends G.S. 20-138.7 to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. This change would also make it an infraction for a passenger to possess an open container or to consume alcohol in a vehicle that is on the public highway or right of way. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car.

Section 4 amends G.S. 20-16.2(c1) to provide that the affidavit an officer must submit regarding chemical analysis or the refusal of analysis be amended to include notice of violations of an alcohol concentration restriction, other than the BAC level, such as if the person refused chemical analysis.

Section 5 amends G.S. 20-19(c3) to clarify that when there is a violation of an alcohol concentration restriction, the officer must submit an affidavit to DMV.

Section 6 amends G.S. 20-179.3(g5) to clarify that when a person receives a limited driving privilege with a mandatory ignition interlock requirement, that the ignition interlock system be set to prohibit driving with an alcohol concentration of greater than 0.00.

Section 7 amends G.S. 20-139.1(b3) regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Sections 8 – 13 make a technical change in several statutes, from the phrase "substantially equivalent" to "substantially similar" in referring to laws of other states, or previous laws of North Carolina.

Section 14 makes a technical change to correct the omission of the word "motor".

Sections 15 – 17 make a technical correction to several statutes.

Section 18 amends the effective date of Session Law 330 of the 1999 General Assembly.

Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000. The remainder of this act becomes effective July 1, 2000.

House Judiciary I Committee
May 25, 2000

Minutes

The House Judiciary I Committee met on Thursday, May 25, 2000 at 10:30 a. m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Blue, Clary, Ellis, Gardner, Insko, Nesbitt and Thompson. A copy of the agenda and the Visitor Registration Sheet are attached to the minutes, (Attachments I and II).

Discussion continued on House Bill 1499, AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, (Attachment III). A new committee substitute was distributed, (Attachment IV). The committee substitute incorporated the suggestions that had been made during discussion by the committee on May 23, 2000.

Ms. Susan Hayes, Committee Counsel, was recognized to explain the changes that were made in the new committee substitute. She stated that the only real change involved a problem that the Department of Public Instruction had with the DWI forfeiture vehicles, but that she had just been informed that DPI did not want to have that language included in the bill. She said that an amendment had been prepared to remove the language if a member chose to offer it.

Chairman Hackney noted that the language was an attempt to streamline the procedure regarding a seized car that is not forfeited, but is not picked up by the owner after the owner is free to pick it up.

Mr. Jeff Moore, Vehicle Administrator, Transportation Services, Department of Public Instruction, was recognized. He said that further research had led DPI to request that the process be left as it currently is.

Representative Ellis noted that the process for getting the cars off of lots is difficult for people such as wrecker owners.

Representative Ellis offered an amendment, (Attachment V), to remove the language that had originally been requested by DPI and moved its adoption. Upon vote of the committee, the amendment was adopted.

Chairman Hackney stated that he had requested that the title be adjusted in order to allow for amendments to the bill will be permitted on the floor.

Representative Ellis offered a second amendment, (Attachment VI). The amendment would add the words, "required to be registered under the laws of North Carolina after "vehicle," and would delete the phrase "public vehicular area," and insert "the right of way of a highway area." Representative Ellis moved its adoption. This motion carried, and the amendment was adopted.

Mr. Nick Graf, Federal Highway Admnistration was recognized and responded to questions regarding the transfer of funds from the highway construction program to safety programs.

Representative Blue expressed concern regarding the requirements set forth by Congress and stated that efforts should be made to preserve North Carolina's sovereignty. He further noted that efforts should be made to make it a violation for the person who possesses an open container, but not to charge the designated driver who has not consumer. He stated that without this measure, the purpose of the designated driver rule. He requested that an amendment be drafted that would charge the passenger holding an open container with an infraction, but not penalize a sober driver.

The meeting was adjourned.

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

May 25, 2000

Agenda

House Bill 1499 – Interlock/Open Container Changes
Representative Crawford

VISITOR REGISTRATION SHEET

House Judiciary I Committee — Name of Committee

May 25, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Diehl	NC Trucking Association
Joseph Reynolds	NC Gov Institute on Alcohol + Sft
Cathy Mayhew	DMV
[illegible]	DMV
[illegible] Edwards	DMV
Rev. Mark H. Creech	Christian Action League, N.C.
[illegible]	NCFPC
Joyce Shandley	NCCADV
[illegible]	NCCADV
[illegible]	DMV
Michael E Bryant	DMV
Anthony Wyatt	NCDOT - Traffic Engineering
John Permar	NCDOT - Traffic Engingering
Dale McKeel	Scenic North Carolina, Inc.
C. A. Gardner	CAPA
Jerry Mobley	mantech Inc
Jeff Moore	DPI
Ann Benham	SBE
Derek Graham	DPI
Matt Osborne	ACC
Nicole Dusenberry	DWI Taskforce
Ruth Sappire	NCDOT
Fred Aller	NC Aggregates Assn.
[illegible]	Martin Marietta
[illegible]	Parker, Poe, Adams & Bernstein, LLP
Susan Valauri	Nationwide
Christie Barlow	CAPA
Sandy Sands	WCSR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a)

of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-CSSA-003

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department

of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subsection (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subsection (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subsection (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

" (f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged

with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subsection (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area. No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right of way of a highway.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section (i) for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container, (ii) for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or (iii) for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;
(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or
(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage in the passenger area, (ii) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right of way of a highway, or (iii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right of way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction and an officer has reasonable grounds to believe the person has violated a restriction not relating to an alcohol concentration, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or

negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's driver's license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

" (b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a

particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 44A-4(b) reads as rewritten:

" (b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by

the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the lien is asserted pursuant to G.S. 20-28.4, and the registered or certified mail notice has been returned as undeliverable, the lienor may use service by publication procedures pursuant to G.S. 1A-1, Rule 4(j1) to serve notice of the intended enforcement of the lien.

~~If~~ In all other cases, if the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall be paid immediately to the Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-301.2.

(2) If the property upon which the lien is claimed is other than a motor vehicle required to be registered, the lienor following the expiration of the 30-day period provided by subsection (a) shall issue notice to the person having legal title to the property, if reasonably ascertainable, and to the person with whom the lienor dealt if different by registered or certified mail, return receipt requested. Such notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the

lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the lienor by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the lienor that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the lienor that a hearing is desired by the return of such form to the lienor. Failure of the recipient to notify the lienor within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the property against which the lien is asserted and the lienor may proceed to enforce the lien by public or private sale as provided in this section. If the lienor is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section only pursuant to the order of a court of competent jurisdiction."

Section 9. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 10. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;
(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;
(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;
(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;
(8) Has been convicted of illegal transportation of alcoholic beverages;
(8a) Has been convicted of impaired instruction under G.S. 20-12.1;
(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1

and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 11. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 12. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the

privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 13. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 14. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 15. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;
b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;
c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or
d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 16. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the

screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 19. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 20. Section 19 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000 and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-079

Page 1 of __

Date 5-25 ,2000

Comm. Sub. [YES]
Amends Title []

Representative Ellis

moves to amend the bill on page 10, line 3, through page 13, line 29 by deleting those lines and renumbering the remaining subsections accordingly;

and on page 19, line 10
by deleting the phrase "Section 19" and inserting the phrase "Section 18".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASO-003

Date 5/25 ,2000

Comm. Sub. [YES]
Amends Title []
PCS

Representative Ellis

moves to amend the bill on page 3, line 25, by adding after the word "vehicle" the phrase "required to be registered under the laws of North Carolina"; and on page 3, line 26, by rewriting the line to read: "highway or ~~public vehicular area:~~ the right of way of a highway:"; and on page 3, line 33, by deleting the phrase "public vehicular area" and substituting the phrase "the right of way of a highway"; and on page 5, line 20, by rewriting the line to read: "vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right of way of a highway with an open"; and on page 5, lines 25-26, by rewriting the lines to read: "(i) the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or the right of way of a highway with an open container of alcoholic beverages, (ii)"; and on page 3, line 32, by adding after the word "vehicle" the phrase "required to be registered under the laws of North Carolina"; and on page 3, line 38, by inserting between the words "vehicle" and "while" the phrase "required to be registered under the laws of North Carolina"; and on page 4, line 3, by adding after the word "vehicle" the phrase "required to be registered under the laws of North Carolina that is"; and on page 5, line 28, by inserting between the words "vehicle" and "while" the phrase "required to be registered under the laws of North Carolina"; and on page 5, line 31, by inserting between the words "vehicle" and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASO-003 Page 2 of __

"while" the phrase "required to be registered under the laws of North Carolina".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee
May 30, 2000

Minutes

The House Judiciary I Committee met on Tuesday, May 30, 2000 at 10:00 in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney and the following members were present: Representatives Clary, Ellis, Gardner, Gray, Redwine, Sossamon and Thompson. The Visitation Registration Sheet denotes visitors who were present, (Attachment I), and a copy of the agenda is attached, (Attachment II).

The Chairman announced that the committee would continue work on House Bill 1499, AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, (Attachment III). He stated that another version of the proposed committee substitute had been distributed that incorporated the two amendments that were adopted during the previous meeting, (Attachment IV).

Ms. Susan Hayes, Committee Counsel, was recognized to explain the changes in the proposed committee substitute (#004). Ms. Hayes stated that one of the amendments removed the changes that had been originally requested by the Department of Public Instruction and the second change, requested by Representative Ellis, removed "public vehicular area" from the bill and inserted the language, "required to be registered under the laws of North Carolina.

The floor was open for a motion. Representative Gray moved that the committee substitute be given a favorable report and that the original bill be given an unfavorable report. The Chairman was unable to determine the voice vote and called for a show of hands. The motion carried by a vote of 4-2. A copy of the committee report is attached, (Attachment V).

The meeting was adjourned at 10:15 a. m.

Joe Hackney, Chairman

Emily Reynolds, Committee Clerk

VISITOR REGISTRATION SHEET

House Judiciary I Committee — Name of Committee

May 30, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Dusenberry	DWI Task Force
Shannon Bullock	GHSP
DAN DEVANE	NC DOT
Robert PASchal	State Farm
Butch Gunnells	NCSDA
Christy Earnhardt	NCATL

ATTACHMENT II

HOUSE JUDICIARY I COMMITTEE

May 30, 2000

Agenda

House Bill 1499 – Interlock/Open Container Changes
Representative Crawford

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a)

of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

ATTACHMENT IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-CSSA-004

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department

of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subsection (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subsection (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subsection (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

" (f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged

with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subsection (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area:~~ the right of way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or the right of way of a highway while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area. No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right of way of a highway.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section (i) for a driver to drive a motor vehicle required to be registered under the laws of North Carolina while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container, (ii) for a passenger to possess an alcoholic beverage other than in the

unopened manufacturer's original container, or (iii) for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation

of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right of way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or the right of way of a highway with an open container of alcoholic beverage in the passenger area, (ii) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right of way of a highway, or (iii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right of way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall

not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

<u>If the person's drivers license has an alcohol concentration restriction and an officer has reasonable grounds to believe the person has violated a restriction not relating to an alcohol concentration, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated.</u> The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-

13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if

committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's driver's license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

" (b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a

condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held

either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the

screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000 and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

ATTACHMENT V

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1499 A BILL TO BE ENTITLED AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID AMANDATORY TRANSFER OF FEDERAL HIGHWAY FUNS.

☐ 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

House Judiciary I Committee
June 6, 2000

Minutes

The House Judiciary I Committee met on Tuesday, June 6, 2000 at 10:00 a.m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney. The following members were present: Representatives Alexander, Blue, Clary, Ellis, Gardner, Gray, Insko, Nesbitt, Sossamon, and Thompson. The Visitor Registration sheet denotes the visitors who were present at the meeting, (Attachment I). A copy of the agenda is attached, (Attachment II).

Chairman Hackney stated that the committee would again consider the committee substitute for House Bill 1499, AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS, (Attachment III). The committee substitute had received a favorable report during the May 30, 2000 meeting of the committee. Chairman Hackney stated that Representative Blue had prepared and had intended to offer an amendment to the committee substitute during that meeting, but arrived at the meeting after the vote had been taken on the bill.

Representative Gray moved to reconsider the vote by which the committee substitute had been given a favorable report. The motion carried.

A new committee substitute was distributed that contained the language of the Blue amendment, (Amendment IV).

The bill was again before the committee. Representative Blue was recognized to explain the changes made in the new committee substitute. He moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Representative Blue explained that the new committee substitute made changes starting on page 3, line 18. He said that it would still be an offense for any passenger to have an open container in a vehicle, but that it would not be an offense for the driver who had not consumed and did not possess an open container. Representative Blue noted that this keeps the designated driver law in tact.

Mr. Frank Folger, Committee Counsel, was recognized to give further explanation.

Representative Thompson asked for clarification of the penalty for possession by passengers.

Mr. Folger stated that possession by a passenger is an infraction and is not a moving violation. The maximum fine is $100 and no costs.

Representative Blue moved that the new committee substitute be given a favorable report and the original bill be given an unfavorable report.

A copy of a certificate that is required by NC G. S. 120-36.8 if a bill proposes a change in law that is thought to be required to implement a federal law, or is needed to bring the State into compliance with federal law, or is needed in order to qualify for receipt of federal funds is attached, (Attachment VI).

Representative Nesbitt raised that point that under the legislation, a person could be charged for possessing an open container in a vehicle while tailgating on a state right-of-way during a football game. He further noted that another possible unintended consequence of the bill would be that a driver could be charged if an open container had been left in the floor of a vehicle, and the driver had not had anything to drink, but did not know the container was there.

The motion was before the committee. Upon vote of the committee, the committee substitute was given a favorable report, (Attachment V).

The meeting was adjourned at 10:30 a.m.

Joe Hackney, Chairman

Emily Reynolds, Committee Clerk

ATTACHMENT I

VISITOR REGISTRATION SHEET

House Judiciary I Committee — Name of Committee

June 6, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Cromer	NCATL
Matt Osborne	AOC
Peg Dorn	NCCDA
Dale McKeel	Scenic NC
Nancy Dunn	intern
Steve Woodson	NC Farm Bureau
Ruth Sappore	NCDOT
Alan Miller	Bailey & Dixon LLP
Jason Reynolds	NC Ctr Inst. On Alcohol + SA
CALVIN LAWRENCE	LEGAL AID, Durham, N.C.

ATTACHMENT II

HOUSE JUDICIARY I COMMITTEE

June 6, 2000

Agenda

House Bill 1499 – Interlock/Open Container Changes
Representative Crawford

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a)

of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-PCSA248-SA004

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area.~~ the right-of-way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or the right-of-way of a highway while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area. No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container or consume an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right-of-way of a highway.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section (i) for a driver to drive a motor vehicle required to be registered under the laws of North Carolina while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container, (ii) for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or (iii) for a passenger to consume an alcoholic beverage if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.; or

(3) In a house trailer as defined in G.S. 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted

in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) of this section shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or the right-of-way of a highway with an open container of alcoholic beverage in the passenger area, (ii) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway, or (iii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that

conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway <u>or public vehicular area</u> in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;
(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;
(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;
(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;
(8) Has been convicted of illegal transportation of alcoholic beverages;
(8a) Has been convicted of impaired instruction under G.S. 20-12.1;
(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;
(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;
(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;
(10a) Has been convicted of operating a motor vehicle ata speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or
(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires

the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1499*
Proposed Committee Substitute H1499-CSSO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Interlock/Open Container Changes.. (Public)

Sponsors:

Referred to: Judiciary I

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department

of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subsection (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subsection (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subsection (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

" (f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged

with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subsection (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area:~~ the right of way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right of way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina

that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right of way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right of way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right of way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this

section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired

driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving

while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's driver's license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge

shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

" (b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol

concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the

reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000 and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed 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) **Hackney** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1499 A BILL TO BE ENTITLED AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID AMANDATORY TRANSFER OF FEDERAL HIGHWAY FUNS.

☐ 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

House Judiciary I Committee
June 22, 2000

Minutes

The House Judiciary I Committee met on Thursday, June 22, 2000 at 10:00 a.m. in Room 1228 of the Legislative Building. The meeting was called to order by Chairman Joe Hackney, and the following members were present: Representatives Alexander, Blue, Boyd-McIntyre, Clary, Gardner, Gray, Insko, Miller, Redwine, Sossamon and Thompson. Representative Baddour, Ex-officio member, was also present. The Visitation Registration Sheet denotes visitors who were present, (Attachment I), and a copy of the agenda is attached, (Attachment II).

Chairman Hackney stated that the committee would consider the House Committee Substitute for Senate Bill 393, AN ACTTO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS AND OPPOSING AFFIDAVITS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY, (Attachment III). He noted that the bill had been before the committee during the previous session and had received a favorable report (7-14-1999). After passing second reading, the bill was withdrawn from the calendar, and referred to the Judiciary I committee.

Senator Miller was recognized to comment on the bill. He stated that the bill amends the Rules of Civil Procedure to require briefs and memoranda in support or opposition of dispositive motions and opposing affidavits to be served upon all parties and to require written motions to state the grounds for the motion with particularity. He said that the bill would bring North Carolina's Rules of Civil Procedure into conformity with federal rules.

A copy of a bill analysis prepared by Ms. Susan Hayes Sitze, Committee Counsel, is attached to the minutes, (Attachment IV).

Judge Tom Ross, Administrative Office of the Courts, was recognized to comment on the bill.

Mr. Bob Kaylor, representing the North Carolina Association of Defense Attorneys, was recognized and spoke in opposition to the bill.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, was recognized and spoke in support of the bill.

Representative Alexander offered an amendment, (Attachment V) and moved its adoption. The amendment changed the effective date from October 1, 1999 to October 1, 2000. Upon vote of the committee, the amendment was adopted.

Committee discussion followed.

A second technical amendment regarding the date was offered by Representative Alexander, (Attachment VI), who moved its adoption. The amendment was adopted.

Representative Blue moved to incorporate the amendments into a new House committee substitute, give the committee substitute a favorable report, and an unfavorable report to House committee substitute #1.

Representative Ellis spoke in opposition to the bill.

Chairman Hackney called for a roll call vote.

The House committee substitute #2 was given a favorable report by a vote of 8-4, (Attachments VII and VIII). A copy of House committee substitute #2 is attached to the minutes, (Attachment IX).

The meeting was adjourned at 10:55

Representative Joe Hackney, Chairman

Emily Reynolds, Committee Assistant

ATTACHMENT I

VISITOR REGISTRATION SHEET

Judiciary 1 — Name of Committee

22 June 2005 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mat Osborne	AOC
Paul Pulley	NCATL
Sona Shandilya	NCCADV
Dick Zimmer	NCATL
Margaret Westbrook	KCLH
[signature]	[signature]
Bill Hurley	NOVA
Heidi Parker	Visitor
LYNN WILSON	SEANC
LISA REYES	THE INSIDER
Jim Kerr	Smith, Anderson
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Lucius Pullen	Attorney
Alan Miles	Bailey & Dixon LLP

ATTACHMENT II

HOUSE JUDICIARY I COMMITTEE

June 22, 2000

Agenda

Senate Bill 393 – Written Motions/Supporting Briefs
Senator Brad Miller

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

4

SENATE BILL 393
Judiciary II Committee Substitute Adopted 3/24/99
House Committee Substitute Favorable 7/14/99
Fourth Edition Engrossed 7/20/99

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS AND OPPOSING AFFIDAVITS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service <u>of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers</u> -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions -- In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material

through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state <u>with particularity</u> the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 5. G.S. 1A-1, Rule 6(d) reads as rewritten:

"(d) For motions, affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits ~~may unless the court permits them to be served at some other time be served not later than one day~~ shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time."

Section 6. G.S. 1A-1, Rule 56(c) reads as rewritten:

"(c) Motion and proceedings thereon. -- The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party ~~prior to the day of hearing~~ may serve opposing ~~affidavits.~~ affidavits at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, or take such other action as the ends of justice require. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the affidavit within the required time.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party."

Section 7. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs, memoranda, and affidavits subject to this act filed on or after that date.

SENATE BILL 393:
Written Motions/Supporting Briefs

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Brad Miller
Date:	June 22, 2000	**Summary by:**	Susan L. Sitze
Version:	4th Edition		Committee Counsel

SUMMARY: ***Senate Bill 393 amends the Rules of Civil Procedure to require briefs and memoranda in support or opposition of dispositive motions and opposing affidavits to be served upon all parties and to require written motions to state the grounds for the motion with particularity.***

BILL ANALYSIS: Senate Bill 393 adds a new subsection (a1) to Rule 5 of the Rules of Civil Procedure to provide that in actions in superior court, briefs or memoranda in support of a motion to dismiss, motion for judgment on pleadings, motion for summary judgment, or any other motion seeking final determination of the rights of the parties as to one or more claims or parties in the action, must be served at least two days before the hearing. The parties may consent to alter this time period.

If the briefs or memoranda are not served within the time required, the court may continue the matter for a reasonable time to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. For the purposes of this two-day requirement only, service is allowed by personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

Rules 6 and 56 are also amended to add the same service requirement for opposing affidavits in response to motions supported by affidavits and in response to motions for summary judgment.

Senate Bill 393 also amends Rule 7(b)(1) to require that the grounds for a motion must be stated "with particularity".

The bill also directs the Revisor of Statutes to print official commentary explaining the amendments to Rule 5(a1) and Rule 7(b).

The act is effective October 1, 1999, and applies to motions subject to this act and to briefs and memoranda subject to this act filed on or after that date.

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 393

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

S393-ASA-080

Date_____,2000

Comm. Sub. [ ]
Amends Title [ ]
Fourth Edition

Representative Alexander

moves to amend the bill on page 5, line 1,
by deleting "October 1, 1999" and inserting "October 1, 2000".

SIGNED Mark B. Alexander
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VI

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 393 4th Ed. Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Alexander
Sen.)

1 moves to amend the bill on page 4, line 3

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "1999" and inserting "2000"

4

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SIGNED Martha B Alexander

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ROLL CALL VOTE

8. YES 4 NO = _____(TOTAL)

HB# ____
SB# 393

HOUSE STANDING COMMITTEE ON Judiciary I

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		Hackney, Chairman			
✓		Nesbitt, Vice Chairman			
✓		Alexander			
✓		Blue			
✓		Boyd-McIntyre			
	✓	Clary			
	✓	Ellis			
	✓	Gardner			
✓		Gray			
✓		Insko			
—	—	Miller			
—	—	Redwine			
✓		Sossamon			
	✓	Thompson			

Ex officio Members

		Baddour
		Cunningham
		Dedmon
✓		Earle

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 393 A BILL TO BE ENTITLED AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

☐ 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 (# 2), ☒ ~~which changes the title~~, unfavorable as to House committee substitute bill (#1).

☐ 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 393
Judiciary II Committee Substitute Adopted 3/24/99
House Committee Substitute Favorable 7/14/99
Fourth Edition Engrossed 7/20/99
Proposed House Committee Substitute S393-PCSA694-SA005

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OR OPPOSITION OF DISPOSITIVE MOTIONS AND OPPOSING AFFIDAVITS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service <u>of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers</u> -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. -- In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material

through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state <u>with particularity</u> the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

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(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

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"The 2000 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

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The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party."

Section 7. This act becomes effective October 1, 2000, and applies to motions subject to this act and to briefs, memoranda, and affidavits subject to this act filed on or after that date.

House Judiciary I Committee
June 30, 2000

Minutes

The House Judiciary I Committee met on Friday, June 30, 2000, at 1:15 p.m. in Room 424 of the Legislative Office Building. Representative Joe Hackney, Chairman, presided. Members present were: Representatives Alexander, Blue, Gardner, Insko, Miller, Redwine, Sossamon, Thompson and Baddour (Ex-Officio). The Visitor Registration Sheet and Agenda are attached as part of the record, (Attachments I and II).

Chairman Hackney called the meeting to order.

SB 1275 – A BILL TO BE ENTITLTED AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A DESIGNATED SECTION OF INTERESTATE 40, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION was presented for discussion, (Attachment III). Senators Jordan and Gulley, bill sponsors, were not present because the Senate was in session at the time of committee meeting.

Chairman Hackney asked Mr. Frank Folger, Committee Counsel, to explain the bill. Mr. Folger stated that the bill extends the current law and excludes from the moratorium certain outdoor advertising: directional and other official signs and notices, site-located advertising for the sale or lease of real estate, and site-located and activity advertising. The bill imposes a moratorium on the issuance of permits for construction of outdoor advertising in the same portion of I-40. A copy of the bill analysis prepared by Mr. Folger is included in the attachments to the minutes, (Attachment IV).

Chairman Hackney asked if anyone wanted to be heard on behalf of the bill.

Mr. Tony Adams, Executive Director, N.C. Outdoor Advertising Association, presented a position paper and spoke in opposition to the bill, (Attachment V).

Mr. Dale McKeel, Scenic North Carolina, spoke in support of the bill.

Ms. Ruth Sappie, NCDOT, spoke in support of the bill.

A representative from the Governor's Office spoke in support of the bill.

Representative Redwine spoke in support of the bill. He stated his area is in agreement with the bill. He asked if a commission should be established to decide what direction the state should go to determine the amount of outdoor advertising.

Representative Miller asked if the names on the position paper presented by Mr. Adams were in support of the paper. Mr. Adams noted that they were in support of past efforts of the organization.

There being no other discussion, Representative Redwine moved that the bill be given a favorable report. The motion carried and SB 1275 was given a favorable report and will be reported out of committee, Committee Report Attachment VI).

Representative Cunningham moved that the remaining bills pending in House Judiciary I Committee be cleared from the box. The motion carried and the following bills will be postponed indefinitely:

House Bill 41	Cartway Amendment
House Bill 57	Motor Vehicle Occupant Restraints
House Bill 111	Traffic Enforcement Statistics
House Bill 198	Adult Care Home Licensure
House Bill 199	Safe Families Act
House Bill 853	Structured Settlement Act
House Bill 920	Vehicular Injury to Pregnant Woman
House Bill 1050	Drug Offender/Require Active Time
House Bill 1056	Limitation for Prod. Liability AC
House Bill 1066	Ban Partial-Birth Abortions – 2
House Bill 1070	Marriage License Change – 2
House Bill 1130	Limit Y2K Liability
House Bill 1157	Increase Small Claims Amount
House Bill 1194	Need Consent to Tape Conversation
House Bill 1231	Safe Storage of Firearms
House Bill 1238	Condemnation Law Modified
House Bill 1248	G.S. 14-190.9 Const. Conformity.
House Bill 1569	Extend Billboard Moratorium
Senate Bill 1161	Extend Billboard Moratorium

There being no further business, the meeting was adjourned at 1:30 p.m.

Representative Joe Hackney, Chairman

Pat Baker, Committee Clerk
(for Emily Reynolds)

ATTACHMENT I

VISITOR REGISTRATION SHEET

House Judiciary I Committee — Name of Committee

June 30, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Adams	NC Outdoor Advertising Association
Emily Meeker	CCNC / Insider
Nat Mc	CCNC
David Knight	NC Sierra Club
Lisa Frace	NC Sierra Club
DAVID ALLSBROOK	NC DOT
Ruth Sapphire	NCDOT
Fred Lyn	WRAL-TV
Molly Diggins	NC Sierra Club

ATTACHMENT II

HOUSE JUDICIARY I COMMITTEE

JUNE 30, 2000
1:15 PM

ROOM 424 LOB

AGENDA

SENATE BILL 1275 – EXTEND BILLBOARD MORATORIUM
SENATOR JORDAN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1275*

Short Title: Extend Billboard Moratorium. (Public)

Sponsors: Senators Jordan, Gulley; Carrington, Horton, Kinnaird, Lee, and Rand.

Referred to: Judiciary I.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A DESIGNATED SECTION OF INTERSTATE 40, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The moratorium on the erection of outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington, imposed by S.L. 1999-436, is extended. The moratorium imposed by this section shall not apply to outdoor advertising described in subdivisions (1), (2), and (3) of G.S. 136-129.

Section 2. A moratorium is imposed on the issuance of permits for the construction of new outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance County line to the municipal limits of the City of Wilmington. The moratorium imposed by this section shall not apply to outdoor advertising described in subdivisions (1), (2), and (3) of G.S. 136-129.

Section 3. This act becomes effective July 1, 2000, and expires July 1, 2001.

SENATE BILL 1275: EXTEND BILLBOARD MORATORIUM

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senators Jordan and Gulley
Date:	June 30, 2000	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1275 extends, from July 1, 2000 to July 1, 2001, the moratorium on erecting outdoor advertising along the portion of Interstate 40 from the Orange-Alamance county line to the Wilmington city limits; and it establishes a moratorium, until July 1, 2001 on the issuance of permits for construction of new outdoor advertising within that same portion of Interstate 40.

CURRENT LAW: Currently, there is a moratorium on erecting outdoor advertising along the portion of I-40 from the Orange-Alamance county line to Wilmington's city limits which expires on July 1, 2000. Session Law 1999-436, which included the original moratorium, also directed the Joint Legislative Transportation Oversight Committee to study whether outdoor advertising along this portion of I-40 should be prohibited and also whether billboard owners should be allowed to go upon the Department of Transportation's right of way to destroy growth blocking the owner's billboard.

BILL ANALYSIS:

Section 1 extends the moratorium imposed by S.L. 1999-436. It excludes from the moratorium as extended, as in the original moratorium, certain outdoor advertising: directional and other official signs and notices, site-located advertising for the sale or lease of real estate, and site-located event and activity advertising.

Section 2 imposes a moratorium on the issuance of permits for construction of outdoor advertising in the same portion of I-40. It excludes from the moratorium the same outdoor advertising excluded in Section 1 of the bill.

This act becomes effective July 1, 2000, and expires July1, 2001.

BACKGROUND:

This act was recommended by the Environmental Review Commission.

Position Paper in Opposition to the Continuation of the Moratorium on New Billboards on I-40 from Wilmington to Orange/Alamance

Billboards have been employed commercially and in public service roles in the U.S. for more than a century. The billboard industry has thrived throughout the economically turbulent 20th century, evidence that this advertising medium is economically productive. The economics of billboards reflect the comparatively low costs and specific locations characteristic of outdoor advertising. *The underlying advertiser base that utilizes billboards in North Carolina, as throughout the country as a whole, has been found, overwhelmingly, to be local small businesses.*

Many memorable national billboard campaigns have appeared throughout the decades: the War Bonds campaigns of the 1940's; the Coppertone Girl and puppy of the 1950's; the Volkswagen aids of the 1960's; the Nike ads of the 1970's; and more recently ads for Calvin Klein and Coca Cola. But local business dominates billboard advertising in North Carolina and across the U.S.

Small and Local Businesses Depend Upon Billboards

Small, local businesses have fewer practical advertising choices. Their markets tend to be more focused, geographically and demographically, than those of "national" products. Billboards can target specific districts and corridors within an area; the copy is visible all of the time, as opposed to, for example, radio; and actual out- of- pocket costs for outdoor advertising are generally low.

North Carolina is a state that depends heavily upon travel and tourism for its economic well-being, and recent research indicates that billboards are a primary source of information for the traveling public. This finding is especially relevant for the travel and tourism industry, as evidenced by its increasing reliance upon billboard advertising. *As many as 20% of the total jobs in rural, scenic areas in North Carolina depend on the travel and tourism dollar.*

In the case of travel and tourism, outdoor advertising is often the only practical and effective advertising medium available to small, local businesses. Advertising in national media would be prohibitively expensive and inefficient for most local advertisers, except for true destination resorts. For these local advertisers, the decision to use outdoor advertising is one of cost effectiveness. Billboard advertising costs about $1 to reach 1,000 people, compared to about $3 for radio and newspapers to reach the same number of potential customers, and $7 for a similar audience reach on TV.

These are significant cost differences for a small business; an advertising campaign that would cost $10,000 on billboards would cost more than $75,000 on TV to reach the same number of people. For a small business of 20-30 people or less this could make the difference in whether or not a company could afford to remain in business. In North Carolina's rural and small town areas, as well as our medium size cities, 90% of billboard advertisers are small, local businesses with less than 50 employees. Even in our state's largest cities over 75% of billboard advertisers are local businesses.

Local Control vs. State Control

Every community has fundamental differences from all others. These include the underlying land, placement of roads and highways, size and shape of various land uses and the legacy of years of municipal decisions reflecting the community's own self image. Because of this, an effective sign code cannot be a copy of another city's code. More importantly, state action which imposes a blanket ban or moratorium on billboard advertising along a route that encompasses jurisdictions of many different municipalities, which this legislation does, by its very nature allows no regard for the special economic needs and the unique nature of each area.

If the moratorium on placement of new billboards on I-40 is continued by enactment of the General Assembly of North Carolina it will effectively throttle the ability of local communities to make decisions that should rightfully be theirs. A legislatively mandated ban on such advertising will send a strong signal that the members of the General Assembly have little faith in the capacity of local communities to know what is best for their local citizens and their local economies.

Who uses billboards in a local community? Based upon all available studies, the majority of advertisers are local, small businesses, many serving the traveler and the tourist. If the NC General Assembly continues a moratorium on new billboards on Interstate 40, what will be the impact on these local businesses? Experience strongly indicates that they will be adversely affected by having less advertising available, unless they somehow manage to utilize more costly advertising alternatives, which most of them will be unable to do. Travelers will certainly bypass these local establishments if they are unaware of their existence. In the end, such a moratorium will only benefit those national and well-heeled chains that have the financial means to imprint their names and slogans upon us all through sophisticated, expensive and national media exposure.

Such a turn of events will, ironically, do more harm to the scenic beauty and the unique character of North Carolina than any billboard ever could. Those who in their zeal to ban billboard advertising assert that billboards are a form of visual pollution will, if their campaign succeeds, create a North Carolina that they did not envision. That will be a North Carolina devoid of local energy and uniqueness, lagging in local economic and community growth, and suffering from a bland and colorless uniformity of national hotels, restaurants, gas stations and retail outlets.

Counties along the stretch of I-40 affected by this legislation do not need the state intervening in their affairs. Each of them should be left alone to decide what regulations and zoning ordinances are proper for its unique situation and location. Some counties, such as Orange County, have chosen to ban any new billboards along its stretch of I-40, while others, such as Duplin and Sampson, continue to allow billboards in their areas. As it is, outdoor advertising is already among the most heavily regulated industries in North Carolina, with over 50 pages in the NC Department of Transportation's Billboard Manual.

The opponents of the billboard industry will not stop if new outdoor advertising is banned on I-40 from Alamance/Orange to Wilmington. They have already stated that their next step is to ban billboards on I-40 west to the Tennessee state line. They then will gain strength from their victory and go after other highways until there are no billboards at all in North Carolina. Four out of fifty states ban billboards. Will North Carolina become the fifth?

Public Service

Every year the outdoor advertising industry helps charities raise funds and build awareness for important national, state and local issues and programs with free advertising space. Today, the industry's annual charitable contributions total over $288 million in donated advertising space to more than 25,000 charitable organizations and community initiatives across the United States. The North Carolina Outdoor Advertising Association (NCOAA) and each of its individual members have contributed several million dollars in free billboard advertising over the past few years to charitable organizations throughout the state. The NCOAA has historically been one of the most charitable and public-spirited business organizations in North Carolina.

Great public service work is an important reminder to the community of what the industry is aware of already: outdoor works for messages both commercial and non-commercial in nature. Outdoor advertisers in North Carolina reach out to communities in need. During disasters like the flooding in the eastern part of the state after Hurricane Floyd, when troops are sent into combat, and when crime and drugs infest neighborhoods, outdoor displays are signs of community caring, strength and hope all across North Carolina.

Over the past few years the outdoor advertising industry has formed partnerships with NHTSA's Drive Nice, the National Center for Missing and Exploited Children, Children's Miracle Network, the American Red Cross, the American Lung Association, the National Heart, Lung and Blood Institute, the National Head Injury Foundation, Posters Against Violence Worldwide, the Advertising Council, Barbara Bush Literacy Foundation, the Muscular Dystrophy Association, National Mental Health Association, DOT Auto Safety Hotline, NHTSA's Buckle Up America, and the Alexander Graham Bell Association for the Deaf.

The North Carolina Outdoor Advertising Association has provided hundreds of free billboard advertisements over the past few years to many public awareness campaigns. Here are just a few: Governor Hunt's North Carolina Promise Campaign to recruit 4,000 mentors for North Carolina's youth, the North Carolina Zoo, the Lung Association of North Carolina, the NAACP, North Carolina Healthy Start's Sudden Infant Death Syndrome (SIDS) awareness campaign, Carolina LifeCare's Organ and Tissue Donor Campaign, the North Carolina Headstart Association, 4-H Clubs of North Carolina, Mothers Against Drunk Driving (MADD), and many others.

Usually an organization must be non-profit and not paying for advertising in another medium. Outdoor companies donate the monthly advertising space fee on a space available basis. The public service recipient receives broad market exposure for 30 days or more. The latest campaign, "Drive Nice," takes aim at the growing and dangerous problem of aggressive driving.

These public and community organizations will be hurt along with paying advertisers if the General Assembly votes to continue the moratorium on any new billboards on I-40 from Alamance/Orange to Wilmington. For example, when the Headstart Association sought NCOAA's assistance with its public awareness campaign their executive director specifically requested that some of the 70 donated billboards be placed on I-40. The NCOAA complied with that request and some of those Headstart billboards did in fact go up on I-40. If the moratorium is continued or if all billboards on I-40 are eventually banned, Headstart and all the other charitable and public organizations will no longer be able to count on this wonderful exposure for their campaigns.

Testimonials of Support

"Words cannot express how grateful I am to the NC Outdoor Advertising Association for supporting mentoring efforts in our state and publicizing the Promise Campaign. This is one of the most important initiatives our state has ever launched and you should feel proud of the Outdoor Advertising Association's role in it."
---Governor James B. Hunt

"I am very pleased with the signs and the manner in which the NCOAA handled this project. The NC Head Start Association is grateful to you for the donation of space and all the end results of your efforts."
--- Doris Jackson, NC Head Start Association

"We are very grateful to your association for providing this outstanding advertising opportunity that would not otherwise be affordable to the North Carolina Zoo."
--Gordon Clark, Marketing Officer

"In the Southeastern part of the state Fairway Outdoor Advertising has been most generous, as has Adams Outdoor in the Charlotte area."
-- Jeff Greene, Director of Special Projects, American Lung Association of NC

"On behalf of transplant recipients and the 1,500 North Carolinians awaiting a life-saving transplant, thank you for posting the Michael Jordan organ donation billboards. As you may know, we do not have an advertising budget and rely on the goodwill of the media to spread the word."
---Sheridan Hill, Carolina LifeCare

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Joe Hackney** for the Committee on **House Judiciary I.**

☐ Committee Substitute for
S.B. 1275 A BILL TO BE ENTITLED AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A DESIGNATED SECTION OF INTERSTATE 40, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW 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

Indefinite Postponement Committee Reports
For Judiciary I Committee
1999-2000 Session

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 41 A BILL TO BE ENTITLED AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute #2 for
H.B. 57 A BILL TO BE ENTITLED AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 111 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT AND MAINTAIN STATISTICS ON TRAFFIC LAW ENFORCEMENT.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 198 A BILL TO BE ENTITLED AN ACT PERTAINING TO THE ISSUANCE OF A NEW ADULT CARE HOME LICENSE TO AN APPLICANT WHO WAS THE LICENSEE OR ADMINISTRATOR OF AN ADULT CARE HOME THE LICENSE OF WHICH HAD BEEN REVOKED OR DOWNGRADED TO PROVISIONAL STATUS OR AGAINST WHICH A TYPE A PENALTY HAD BEEN ADDRESSED.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 199 A BILL TO BE ENTITLED AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 853 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 920 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR ENHANCED PUNISHMENT WHEN THE OFFENSE OF INJURY TO PREGNANT WOMAN BY VEHICLE IS COMMITTED.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1050 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A DRUG FELONY MUST SERVE AN ACTIVE TERM OF IMPRISONMENT.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1056 A BILL TO BE ENTITLED AN ACT TO CHANGE THE LIMITATION WITHIN WHICH A PRODUCT LIABILITY CASE MAY BE BROUGHT FROM SIX YEARS TO FIFTEEN YEARS AFTER THE DATE OF PURCHASE.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1066 A BILL TO BE ENTITLED AN ACT TO BAN PARTIAL-BIRTH ABORTIONS.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1070 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES CONCERNING THE ISSUANCE OF A MARRIAGE LICENSE.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1130 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA TORT CLAIMS ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR TORT DAMAGAES BASED ON CERTAIN COMPUTER FAILURES, TO PROTECT THE STATE FROM BREACHING CONTRACTS DUE TO CERTAIN COMPUTER FAILURES, AND TO PROTECT STATE AND LOCAL GOVERNMENT EMPLOYEES FROM PERSONAL LIABILITY DUE TO CERTAIN COMPUTER FAILURES.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1157 A BILL TO BE ENTITLED AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1194 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO RECORD A TELEPHONE CONVERSATION WITHOUT THE CONSENT OF ALL PARTIES TO THE 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1231 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1238 A BILL TO BE ENTITLED AN ACT TO AMEND THE GENERAL STATUTES RELATING TO CONDEMNATION 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1248 A BILL TO BE ENTITLED AN ACT TO BRING G.S. 14-190.9 INTO CONFORMITY WITH G.S. 14.190.1.

☐ 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1569 A BILL TO BE ENTITLED AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A DESIGNATED SECTION OF INTERSTATE 40, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW 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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ House Committee Substitute #2 for
S.B. 1161 A BILL TO BE ENTITLED AN ACT TO EXTEND THE MORATORIUM ON NEW BILLBOARDS ALONG A DESIGNATED SECTION OF INTERSTATE 40, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW 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